

83 - 1638

No. ...

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

CHRISTOPHER EDDY, et al.,

PETITIONERS,

v.

UNITED STATES OF AMERICA and
THE HOOPA VALLEY TRIBE,

RESPONDENTS.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

JAY G. FOONBERG
FOONBERG & CHAYO
8500 Wilshire Blvd., Suite 900,
Beverly Hills, Calif. 90211,
(213) 652-5010,

Attorney for Petitioners.

Of Counsel:

FOONBERG & CHAYO
LESLIE E. CHAYO
MARK E. FINGERMAN
SHERI J. HUTTNER

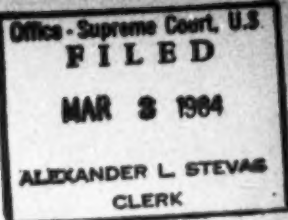


TABLE OF APPENDICES

	<u>Page</u>
A -- Opinion of Court of Appeals, October 6, 1983.....	A-1
B -- Opinion of Court of Claims, Trial Division, March 31, 1982.....	B-1
C -- Opinion of Court of Claims, September 23, 1981.....	C-1
D -- Opinion of Court of Claims, October 17, 1973.....	D-1
E -- Plaintiffs' Joint Memorandum of Pretrial Conference, March 12, 1981.....	E-1

	<u>Page</u>
F -- Letter from Clifford L. Duke, Jr. and William K. Shearer to Christopher James Eddy, December 9, 1983.....	F-1
G -- Letter from Harold C. Faulkner, to Margaret Mathews, January 26, 1984.....	G-1
H -- American Bar Association Model Code of Professional Responsibility, EC5-15, EC5-16, DR 5-106 & DR7-101.....	H-1
I -- Plaintiffs Subject to October 1981 Motions for Summary Judgment Whose Motions Were Denied by Trial Judge's Conclusion of Law No. 7.....	I-1

**UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT**

JESSIE SHORT, ET AL.)	
Appellants,)	
v.	)	Appeal No. 102-63
)	
THE UNITED STATES,)	
Cross-Appellant and)	
Appellee,)	
and)	
)	
HOOPA VALLEY TRIBE,)	
Cross-Appellant and)	
Appellee.)	

DECIDED: October 6, 1983

Before RICH, DAVIS, BENNETT, SMITH and NIES,
Circuit Judges. DAVIS, *Circuit Judge.*

This ancient case (commenced against the Government in the Court of Claims some two decades ago) comes once again for appellate scrutiny. Ten years ago, in [App. 40] 486 F.2d 561 (Ct. Cl. 1973), *cert. denied*, 416 U.S. 961, the Court of Claims decided that the Hoopa Valley Reservation was one reservation all of whose Indian peoples (including, in general, non-Hoopa Indians residing on or connected with the reservation) were "Indians of the Reservation" entitled to equal rights in the division of timber profits (and other income) from the unallotted trust land of the reservation, and therefore that the United States had wrongfully paid those profits exclusively to the members of the Hoopa Valley Tribe.¹ In 209 Ct. Cl. 777 (1976), the court allowed interventions by new plaintiffs and closed the class of

1. The Hoopa Valley Tribe, which previously participated as amicus curiae, was permitted to intervene at that time as a party defendant.

See also Hoopa Valley Tribe v. United States, 596 F.2d 435 (Ct. Cl. 1979).

plaintiffs (now amounting to some 3800). In [App. 24] 661 F.2d 150 (Ct. Cl. 1981), *cert. denied*, 455 U.S. 1034 (1982), the court denied new motions to dismiss and to substitute the Yurok Tribe as plaintiff, and directed the trial judge to recommend standards for the qualification of the approximately 3800 remaining plaintiffs as Indians of the Hoopa Valley Reservation entitled to share in the income of the Reservation. On March 31, 1982, then Trial Judge Schwartz, who had long handled the case at the trial level, issued his opinion on that subject. In that decision, he established standards for qualifying the various plaintiffs and granted and denied the plaintiffs' motions for summary judgment in accordance with those standards. All parties appeal from that decision which is now before us.¹

Shortly before and at the oral argument of this appeal, the United States and the Hoopa Valley Tribe raised again the issue of the jurisdiction of the Court of Claims (and, now, of the Claims Court) over the entire suit. Though the question of the court's jurisdiction had been previously raised (and jurisdiction sustained) on a number of occasions, the new challenge was on grounds not before articulated (though the assault was one that could readily have been presented much earlier). We allowed the Government and the Hoopa Valley Tribe to file motions to dismiss on the new basis, and those motions have been extensively briefed. We withheld decision on the appeal until the Supreme Court had decided *United States v. Mitchell*, U.S. Sup. Ct., Oct. Term 1982, No. 81-1748 (*Mitchell II*). That decision was rendered on June 27, 1983 (___ U.S. ___, 103 S. Ct. 2961, 51 U.S.L.W. 4999), and we then allowed the parties to brief the impact on the present case of the Supreme Court's recent opinion and ruling. We are now ready to dispose of the current appeal.

2. The parties filed petitions for review of Trial Judge Schwartz's decision before October 1, 1982. Pursuant to an October 4, 1982 order of this court, the Claims Court entered judgment on October 6, 1982, corresponding to the decision recommended in this case by Trial Judge Schwartz. The case was transferred on October 1, 1982, to this court under section 403 of the Federal Courts Improvement Act of 1982, 96 Stat. 67-8 (April 2, 1982).

In Part I of this opinion, *infra*, we discuss the new challenge to jurisdiction and reject it, especially in the light of *Mitchell II*. In Part II, *infra*, we consider the merits of Judge Schwartz's standards and affirm them, as well as his conclusions of law.

I. Jurisdiction

This is an action for monies said to have been illegally distributed to members of the Hoopa Valley Tribe, without any share going to those of the plaintiffs who qualify as Indians of the Hoopa Valley Reservation. The details are set forth in the Court of Claims' decisions reported at [App. 24 and 40] 486 F.2d 561 and 661 F.2d 150. The current jurisdictional attack³ is that Congress has not waived sovereign immunity for the suit and in any event that plaintiffs have no substantive claim for money from the United States (even if their allegations and substantive positions are sustained, as they have been).

A.

In *Mitchell II*, the Supreme Court upheld jurisdiction in the Court of Claims (and, now, in the Claims Court) of a suit by Indian plaintiffs for damages for breach of fiduciary duties by the Government. On the jurisdictional issue now before us, the current case is essentially governed by that recent decision. Just like *Mitchell II*, this litigation concerns Indian-owned forest lands on an Indian reservation (there, the Quinalt Reservation in Washington; here, the Hoopa Valley Reservation in California), with these forest resources being managed by the Department of the Interior which exercises "comprehensive" control over the harvesting of the Indian timber. See Part III of the Supreme Court's opinion in *Mitchell II*, — U.S. —, 103 S.Ct. at 2969-74, 51 U.S.L.W. at 5003-5004; also see — U.S. —, 103 S.Ct. at 2965-66, 51 U.S.L.W. at 5000. The "broad" statutory authority of the

3. As we have said, there have been several other jurisdictional challenges in the past—all rejected by the Court of Claims.

Secretary of the Interior over the sale and management of the timber on the two reservations is precisely the same, i.e., 25 U.S.C. §§ 405-406. In *Mitchell*, those plaintiffs claimed breach by the Government of fiduciary duties in the management and sale of the timber; here, plaintiffs likewise claim breach of such fiduciary duty. The difference is that in *Mitchell II* the alleged injury had to do with such things as the price obtained for the timber, failure to manage on a sustained yield basis, and exacting improper fees and charges - here the injury is the discriminatory distribution of the proceeds of the timber sales and management (and other Reservation income). The Supreme Court expressly held that the statutes and regulations relating to the management of Indian timber [App. 194], see primarily 25 U.S.C. §§ 405-407, established a fiduciary relationship with respect to the timber, and because they clearly established such "fiduciary obligations of the Government in the management and operation of Indian land and resources, they can fairly be interpreted as mandating compensation by the Federal Government for damages sustained. Given the existence of a trust relationship, it naturally follows that the Government should be liable in damages for the breach of its fiduciary duties." — U.S. — 103 S.Ct. 2971-73, 51 U.S.L.W. 5004-5005, especially — U.S. — 103 S.Ct. 2972, 51 U.S.L.W. 5005. It must also follow that the Government was under fiduciary obligations with respect to the comparable Indian forest lands involved here, and is liable for breach of fiduciary obligation in failing to distribute the sale proceeds (and other income) to persons entitled to share in those proceeds - such as those plaintiffs who turn out to be qualified in this case.

B.

The contentions of the Government and of the Hoopa Valley Tribe (on the matters discussed in this Part I) that have survived *Mitchell II*⁴ all lack merit. First, it is conceded

4. We refer to the contentions made in the briefs filed with us by those parties after and in the light of *Mitchell II*.

that *Mitchell II* destroys the argument that there has been no waiver of sovereign immunity. The Supreme Court ruled, overriding prior intimations to the contrary, that the Tucker Act is the only necessary consent to suit where statutes and regulations create substantive rights to money damages against the United States. — U.S. —, 103 S.Ct. at 2969, 51 U.S.L.W. at 5003. "If a claim falls within this category, the existence of a waiver of sovereign immunity is clear" and the statutes or regulations founding the claim "need not provide a second waiver of sovereign immunity." *Id.* The opinion went on to declare that, in determining whether statutes or regulations create substantive rights to money, the court need not construe them "in the manner appropriate to waivers of sovereign immunity." *Id.*

The remaining issue (for this Part I) is whether there are statutes or regulations creating substantive rights to money. As we have said *supra*, *Mitchell II* specifically held that the forest management laws and regulations (which likewise pertain to this case) do create such substantive rights to money. The Government and the Hoopa Valley Tribe now try to distinguish *Mitchell II* by saying that that case involved only allotted lands, while the present litigation concerns unallotted lands. The former are dealt with in 25 U.S.C. § 406 and the latter in 25 U.S.C. § 407. But the Supreme Court's whole opinion consistently treats together both sections (and the regulations under them) in ruling that the statutory scheme creates a fiduciary duty toward the Indians entitled to the proceeds of the forest. See — U.S. —, 103 S.Ct. at 2963-64, 2964-65, 2969-71, 2971-74, 51 U.S.L.W. at 5000, 5001, 5003-04, 5004-5005. The comprehensive control by the Interior Department is precisely the same for both types of land, and that is the primary reason for finding a fiduciary duty on the part of the Government. — U.S. —, 103 S.Ct. at 2971-74, 51 U.S.L.W. at 5004-05. The purpose to benefit the Indians is equally clear. Section 407 (treating with unallotted lands) authorizes sale by Interior of timber on unallotted lands, and then specifically provides that "the proceeds from such sales *** shall be used for the benefit of the Indians who are

members of the tribe or tribes concerned in such manner as [the Secretary] may direct." In this respect there is no substantial difference between sections 406 and 407,⁵ and both "can fairly be interpreted as mandating compensation by the Federal Government for damages sustained." — U.S. —, 103 S.Ct. at 2973-74, 51 U.S.L.W. at 5005.

Both movants (the Government and the Hoopa Valley Tribe) also make much of the fact that the Act of April 8, 1864, 13 Stat. 39 [App. 55-56], which authorized the establishment of the Hoopa Valley Reservation and on which the Court of Claims primarily based its determination that qualified plaintiffs were entitled to share in the disputed monies (although they were not members of the Hoopa Valley Tribe), did not contain any authorization to the Government to sell or manage timber or empower the Government to distribute the proceeds. That may be true but it is irrelevant to the jurisdictional point before us. When this action was begun in 1963, the timber management legislation (mainly 25 U.S.C. §§ 405-407) and the regulations thereunder [App. 194], which do sustain jurisdiction, had long been on the books⁶ and covered all the monies claimed in the suit (which do not go back beyond the six years prior to the commencement of the action in 1963). The function of the 1864 statute is to help show that the Government had a fiduciary relationship toward qualified plaintiffs with respect to the Hoopa Valley Reservation and also to show that the Secretary's action in excluding all but members of the Hoopa Valley Tribe from the distribution of the monies was unlawful.

It is also said that 25 U.S.C. § 407 directs use of the timber proceeds for the benefit of Indians "who are members of the tribe or tribes concerned," and that none of the plaintiffs is a member of an organized or recognized "tribe" (as the Hoopa

5. Section 406 provides that proceeds of sales from allotted land "shall be paid to the owner or owners or disposed of for their benefit under regulations to be prescribed by the Secretary of the Interior" (emphasis added).

6. The first of these statutes was enacted in 1910, and the first regulations issued in 1911.

Valley Tribe has been since 1950). But it is clear to us that Congress, when it used the term "tribe" in this instance, meant only the general Indian groups communally concerned with the proceeds - not an officially organized or recognized Indian tribe - and that the qualified plaintiffs fall into the group intended by Congress. This was in effect an implicit holding of the Court of Claims when it decided in 1981 (*en banc*) that the non-organized Yurok tribe should not be substituted for the present plaintiffs. [App. 28-34] 661 F.2d at 153-156. In any event, it is the proper interpretation if, as has already been held, qualified plaintiffs are entitled to recover a proper share of the proceeds. From its original enactment in 1910 until its amendment and reenactment in April 1964, § 407 provided that proceeds from the sale of timber on unallotted lands "shall be used for the benefit of *Indians of the Reservation*" (emphasis added).⁷ The 1964 substitution of "members of the tribe or tribes concerned" for "Indians of the Reservation" was obviously not designed to cut off existing rights of Indians of a reservation with respect to communal land (or to change the definition of those entitled) but rather more clearly to allow coverage of Indians who were entitled to proceeds from reservation property but who happened to reside elsewhere than on the reservation. H.R. Rep. No. 1292, 88th Cong., 2d Sess. [App. 172-74], reprinted in 1964 U.S. Code Cong. & Ad. News 2162-63.⁸ The word "tribe" (as related to Indians) has no fixed, precise or definite meaning but can appropriately include "Indians residing on one reservation." See the definition in 25 U.S.C. § 479 (part of the Indian Reorganization Act of June 18,

7. This was the way the statute read when this suit was begun in 1963.

8. The Hoopa Valley Tribe attempts, by referring to unpublished testimony at committee hearings [App. 178-87] and by offering a present-day affidavit of a witness at the hearing in the 1960's [App. 191], to persuade us that what is now § 407 was always meant to cover only organized tribes, but this far-fetched "legislative history" is totally unpersuasive (even if admissible, which is very questionable) as against the official history, the terms of the legislation, and the whole context of the unpublished hearings.

1934). With respect to the Hoopa valley Reservation, that is its meaning in 25 U.S.C. § 407.

Finally, there can be no doubt whatever that, if the Secretary decides (as he has) to distribute proceeds under § 407, he must act non-discriminatorily and cannot exclude any of those Indians properly entitled to share in the proceeds. In this instance the Court of Claims has twice held that qualified plaintiffs are entitled to share and that their exclusion was arbitrary (see [App. 144] 202 Ct. Cl. 870, 980-81 (finding 189); [App. 31-32] 661 F.2d at 155) - and those holdings are the law of this case. In § 407 Congress obviously did not permit the Secretary, once he decides to distribute proceeds, to make arbitrary classifications in distributing those proceeds.

C.

A conceptually separate (though closely related) ground of jurisdiction is supplied by the fact that plaintiffs are suing for a portion of the funds collected by the Government from sales of Indian timber and initially deposited in trust funds in the Treasury before the illegal distribution. Most (if not all) of the monies for which plaintiffs are suing were deposited in the Treasury in a "proceeds of labor" account or an account for "interest on proceeds of labor." See [App. 134-35] 202 Ct. Cl. at 970-71. Under 31 U.S.C. § 1321(a)(20) (as previously worded and as worded in Pub. L. 97-250, Sept. 13, 1982, 96 Stat. 919) those are designated trust funds; accordingly, the proper beneficiaries can sue under the Tucker Act if those funds illegally leave the Treasury. There is, of course, jurisdiction to decide whether claimants are proper beneficiaries (at least if, as here, their claims are substantial and non-frivolous). It has now been decided (in the Court of Claims decisions already cited) that qualified plaintiffs have a direct interest in those funds, which are now or previously were in the Treasury, and are proper beneficiaries. They therefore have a right to sue for the parts of those funds improperly distributed to others or illegally

withheld from those claimants. *Eastport S.S. Corp. v. United States*, 372 F.2d 1002, 1007 (Ct. Cl. 1962); *Hoopa Valley Tribe v. United States*, 596 F.2d 435, 436-37 (Ct. Cl. 1979). If, as here, monies are collected and held by the Government for particular persons, the Tucker Act authorizes suit even though the person has not himself paid over the money. See *Mitchell II*, ___ U.S. ___, 103 S.Ct. 2971, fn. 23, 51 U.S.L.W. 5004, fn. 23.

D.

For these reasons we deny the motions to dismiss and reaffirm the jurisdiction of the Court of Claims and the Claims Court over this action.

II. Merits

On its merits this case presents the standards to be applied in determining those of the 3800 plaintiffs who are qualified to share in the Reservation's timber proceeds (and other income) as Indians of the Reservation.⁹ This is a matter of individual entitlement not of tribal membership for other purposes. See *Short v. United States*, *supra*, [App. 29-31] 661 F.2d at 154. In its *en banc* decision of September 23, 1981, the Court of Claims, [App. 24, 36-39] 661 F.2d 150, 158-59, held that (a) "the standards used to determine the membership of the Hoopa Valley Tribe [i.e., those who actually received shares of the monies] also provide an appropriate basis for determining which of the plaintiffs are Indians of the Reservation"; (b) the trial judge should initially formulate those standards but in doing so "basically should apply" the Hoopa Valley Tribe standards; (c) the trial judge had, however, "sound discretion to determine what, if any, changes should be made in the Hoopa standards and in the application of the governing standards in individual cases"; and finally (d) "[t]here is need for some flexibility, so that

9. Judgments have already been entered for 22 plaintiffs determined by the Court of Claims to be qualified and for 121 more whose status the Government did not challenge after the 1973 decision on liability. See *Short v. United States*, *supra*, [App. 25-31] 661 F.2d at 151, 152, 153, 154.

recognition can be given to the small number of cases in which the [Hoopa] standards cannot be strictly applied or in which their strict application would produce manifest injustice. Moreover, there may be differences between the situations of the Hoopas and the Yuroks [plaintiffs claim to be Yuroks] that necessitate some differences in the standards governing the membership of the two Tribes."¹⁰

Judge Schwartz's comprehensive and careful opinion is designed to meet those directives. First he set out in detail the standards actually used for membership in the Hoopa Valley Tribe (and therefore actually used for distribution of the monies in question). Then he applied those standards to the group of plaintiffs, making changes needed to obviate "the factors wrongfully used to exclude the claimants from the distribution" and in part to conform to the different history of plaintiffs' group from that of the Hoopas. For details of the trial judge's determinations, we refer to his opinion. His summary of conclusions, which we affirm, is reproduced in the Appendix to this opinion. See also note 14, *infra*.¹¹ We discuss below the objections raised by the various parties to Judge Schwartz's conclusions.

A. Plaintiffs-Appellants' Objections

Judge Schwartz found that the Hoopas had separate schedules of membership, depending generally on the relationship of the individual to the Hoopa tribe or the Square (where the Hoopas lived) as of various dates (Schedules A,

10. We reiterate, once again, that it has always been plain that this development of standards was solely for the purpose of determining the money judgments in this suit, not for other purposes of tribal membership or organization. See [App. 29-33] 661 F.2d at 154-55. See also part III, *infra*.

11. At the direction of the trial judge, the Government and the Hoopa Valley Tribe filed with the Court of Claims (on May 2, 1962) a list of the plaintiffs who defendants believe qualify under the five standards established by the trial judge (Attachments A through E). These lists were based on information previously supplied by plaintiffs. The joint list included 2161 plaintiffs [App. 214-51].

B. and C).¹² As we have said, he then formulated analogous groups of plaintiffs, as shown in the Appendix to our opinion (these were grouped into five Attachments).¹³ The trial judge also indicated that individual plaintiffs, not included in one of these five groups, could subsequently seek qualification on the basis of "manifest injustice" and the individual's particular set of circumstances.

Plaintiffs challenge the composition of the trial judge's five groups, mainly on the ground that he should not have used the dates and some of the standards the Hoopas used because, it is said, those dates and standards were peculiar to events and circumstances in Hoopa history and immaterial to the history of the plaintiffs or of the Yuroks who did not

12. In paraphrased summary, these Hoopa schedules were found to be:
Schedule A: Square allottees, or their descendants, living on October 1, 1949;

Schedule B: Indians living as of October 1, 1949, whose residence within the Square was not subject to question, who never received allotments but were generally considered as members of the Hoopa Valley Tribe and permitted to participate in tribal affairs, and their descendants living on October 1, 1949;

Schedule C: Indians residing within the Hoopa Valley Reservation for a minimum of 15 years, who had forebears born within the 12-mile square Hoopa portion of the Reservation, who had at least $\frac{1}{4}$ degree Indian blood, and who filed an application within the 60-day period ending June 2, 1953.

13. In paraphrased summary, Judge Schwartz determined the following groups of plaintiffs to be qualified:

Attachment A: Allottees of the Reservation and their descendants living anywhere on the Reservation on October 1, 1949.

Attachment B: Residents of the Reservation (and their descendants) living on October 1, 1949, who have received Reservation benefits and services, and hold an assignment or can prove entitlement to an allotment.

Attachment C: Persons living on June 2, 1953 with at least $\frac{1}{4}$ Reservation blood (defined to include a number of tribes connected with the Reservation) who had lived on the

live on the Square (the portion of the Hoopa Valley Reservation occupied by the Hoopas). There are two sets of plaintiffs represented by different counsel; between them they raise the following points: (1) census enrollees (on the whole Reservation) and their descendants should be considered fully equal to allottees (and their descendants) (Attachment A) for qualification purposes; (2) assignees and their descendants should also be considered fully equal to allottees on Attachment A; (3) Attachment B should include plaintiffs who did not live on the Reservation on October 1, 1949 (as well as those who did); (4) instead of the dates employed by the trial judge (Oct. 1, 1949) (used by the Hoopas); June 2, 1953 (also used by the Hoopas); August 9, 1963 (considered the commencement of the present suit)), the most relevant date should be April 23, 1976, when the Court of Claims closed the class of plaintiffs; and (5) application of the Hoopa Valley Tribe's criteria of blood degree for those born after October 1, 1949 (see Attachments D and E) is error.

In appraising these points - which were made before the trial judge and which he considered - we are governed, as he was, by the fundamental premise, enunciated by the *en banc* Court of Claims in 1981 - and of course binding on us - that "the standards used to determine the membership of the Hoopa Valley Tribe" also provide an appropriate basis

Footnote 13 (Con't)

Reservation for 15 years prior to June 2, 1953 and have ancestors born on the Reservation.

Attachment D: Persons possessing at least $\frac{1}{4}$ Indian blood and who were born after October 1, 1949 and before August 9, 1963 (the date the present action was commenced) to a parent who did qualify or would have qualified as an Indian of the Reservation under Attachments A, B or C. *supra*.

Attachment E: Persons born on or after August 9, 1963, of at least $\frac{1}{4}$ Indian blood derived exclusively from a parent or parents who qualified under Attachments A, B or C. *supra*.

14. These standards were known in 1981 to the Court of Claims since they had been "described and explained" in the findings in the 1973

for determining which of the plaintiffs are Indians of the Reservation" entitled to recovery here. [App. 37-38] 661 F.2d at 158. Some leeway was allowed to the trial judge but the Hoopa Valley Tribe standards were to be the matrix. We cannot agree with plaintiffs' apparent views that major surgery, with profound alterations, was contemplated, or that the function of the trial judge, under the Court of Claims' 1981 decision, was basically to decide *de novo*, with some reference to the standards of the Hoopa Valley Tribe, who were "Indians of the Reservation." Moreover, in the limited area where the trial judge had leeway, it was recognized by the Court of Claims to be within his "sound discretion," [App. 38] 661 F.2d at 159, a discretion which he has exercised and which is subject to review here only for abuse. There is also one more general factor we must consider. The Court of Claims was very eager to bring this long-lasting case to its proper conclusion, and that was a prime reason it determined to follow the general outline of the existing Hoopa standards, see [App. 36-39] 661 F.2d at 157-159. Unnecessary further proceedings to determine qualification should therefore be avoided.¹⁴

In this light we reject plaintiffs' objections (as we do those of the Government and the Hoopa Valley Tribe, see *infra*). Judge Schwartz correctly framed his standards on the standards of the Hoopa Valley Tribe, and he did not abuse his discretion in refusing to make the further changes plaintiffs sought.

The refusal to include all assignees (and their descendants) on Attachment A (note 14, *supra*; Appendix, *infra*) was warranted because (1) Schedule A of the Hoopa list (note 13, *supra*) was definitely limited to allottees (and their descendants); (2) Attachment B of the trial judge's standards (note 14, *supra*; Appendix, *infra*) specifically takes account

Footnote 14 (Con't)

decision. See [App. 37] 661 F.2d at 158. The trial judge did not misconstrue them in his opinion which we are reviewing. See Part II. C. 1. *infra*.

15. Of course, the same general principles apply to our review, *infra*, of the objections of the United States and the Hoopa Valley Tribe.

of those Indians holding assignments; and (3) the trial judge's opinion also expressly leaves open to any plaintiff "who can qualify only on the basis of an assignment held by the plaintiff or an ancestor" to argue in further proceedings that he is entitled to recover on the basis of "manifest injustice" (recognized by the Court of Claims, [App. 38] 661 F.2d at 158) in view of the facts of his individual case. These are good reasons for the judge's position. As for those who had (or whose forebears had) census enrollments (but neither allotments nor assignments), Judge Schwartz refused to consider that as a *per se* mark of qualification because (1) "though census enrollment bespeaks a tie to the Reservation, it does not establish an attachment to the Reservation equal to that of allotment, which is ownership of the land";¹⁶ (2) some enrollees lived off the Reservation while residence was required for an allotment (or assignment); and (3) relief could be available under the "manifest injustice" standard by proof of census enrollment plus other adequate ties to the Reservation. Taken together, that is most certainly a sensible stance.

Use of the blood degree provisions of Hoopa Schedule C (note 13, *supra*) in formulating the trial judge's standards for Attachments C, D and E (note 14, *supra*; Appendix, *infra*) is also acceptable. That was an integral requirement for those Hoopas not on Schedules A and B, and therefore should be followed in trying to approximate those who would have appeared on those rolls for the distribution of the monies if those rolls had been properly prepared and not limited to Hoopas alone. So also for the general residence requirement for Attachment B (note 14, *supra*; Appendix, *infra*); that requirement was directly based on Hoopa Schedule B (note 13, *supra*) which undoubtedly called for residence on the Reservation.¹⁷

16. Assignments were also directly related to land.

17. Similarly, the trial judge properly held that listing on Hoopa Schedule C (note 13, *supra*) did not carry with it automatic membership of those Indian children living on October 1, 1949. "The C children were themselves required for membership to have the Schedule C qualifications." Constantly, the judge carried this over into Attachments C, D and E (note 14, *supra*; Appendix, *infra*).

The most substantial of plaintiffs' objections relate to the use in the new standards of dates directly concerned with Hoopa history alone (October 1, 1949; June 2, 1953) and not otherwise pertinent to plaintiffs. But we cannot say that the trial judge erred in directly following the Hoopa standards, as the Court of Claims ordered him to do, or that he abused his discretion in refusing to employ later or other dates. The purpose of the exercise, for this case, is to pay to those plaintiffs, deprived by the Hoopa standards of proper payment, the share they would have been paid under those standards if those criteria had included all the Indians of the Reservation, not merely the Hoopas alone. To achieve that end, it is relevant to consider the dates actually used in determining to whom to pay out the monies in question. In particular, it would not be right to advance the date for qualification (as plaintiffs ask) to April 23, 1976, when the Court of Claims allowed no further plaintiffs to be added; that date has no connection whatever with the substantive issues the Court of Claims considered and which we are now considering."

B. The Government's Objections

The Government has five objections to the trial judge's standards, none of which we accept. We treat them in turn.

1. In view of Hoopa Schedule B (note 13, *supra*), the proposal is that the trial judge's Attachment B (note 14, *supra*; Appendix, *infra*) be modified to require additional factual proof and analysis (in further proceedings) of plaintiffs' participation in benefits and services before inclusion in Attachment B. Only in that way, the United States says, can it be known that plaintiffs included in

18. In one of their reply briefs on the merits, plaintiffs point to two alleged minor "errors" in the trial judge's standards, and assert they were inadvertent and should be corrected. We are not certain those parts of Attachments B and E (note 14, *supra*; Appendix, *infra*) were inadvertent, but in any event we leave those plaintiffs excluded by those alleged errors to possible individual relief under the doctrine of "manifest injustice" if other facts show that those individuals should be included in the class entitled to recover.

Attachment B have a connection with the Reservation analogous to that of Hoopas listed in Schedule B. We think, however, that Attachment B, as now worded, is clearly analogous in its terms to Hoopa Schedule B and we leave it to the trial judge's discretion, on remand, to implement the general standard of Attachment B as he sees fit. It is needless, and surely would not advance this litigation to its conclusion, for us to mandate further particular proceedings if the trial judge properly believes that he can decide inclusion in Attachment B on the basis of the materials and information already available to him.

2. The United States disapproves of any consideration of assignments to plaintiffs (or their forebears) (see Attachment B, note 14, *supra*; Appendix, *infra*) because the Hoopa tribe did not use assignments in deciding who of that tribe's members should share in the disputed payments. We agree with the trial judge that this practice of the Hoopas is not controlling. It may not have been necessary for the Hoopas to use assignments, but it is nevertheless clear that the same qualifications were required for an assignment as for an allotment; it was scarcity of land at the time that accounted for the making of assignments instead of allotments. Both show attachment to the land. We have already rejected (see Part II, A, *supra*) plaintiffs' desire to place all assignees (along with allottees) in Attachment A. But that is no reason to differ with Judge Schwartz in his careful treatment of assignees in Attachment B, and also as possible part of proof showing "manifest injustice."

3. Objection is likewise made to the trial judge's contemplation that census enrollments can be used in connection with proof of "manifest injustice." See Part II, A, *supra*. But proof must in any case show adequate ties to the Reservation, and a census enrollment can certainly be one factor in that proof. There should be no automatic rule totally excluding such enrollments from being given any consideration in any case.

4. The Government takes exception to the inclusion of six Indian groups (Karak, Sinkyone/Sinkiane, Tolowa, Wintun,

Wiyot and Wailake/Wylackie) in the trial judge's concept of Reservation Indian blood for Attachments C, D and E (note 14, *supra*; Appendix, *infra*). The Government says that those six groups had inadequate connection with the Reservation. Though there may be evidence and material going the other way as to each of those six, there was also sufficient support for the trial judge's finding to require us to uphold it under the "clearly erroneous" standard.

5. Finally, the United States argues that no plaintiff who is a member of another tribe or band should be allowed to recover in this action. This is the plea for "disqualification by dual tribal status" that the trial judge expressly rejected. We agree with him. As Judge Schwartz carefully pointed out, there is no good proof that the Hoopas ever disqualified any Hoopa from receiving a share of the monies in question because of "dual membership." Nor do the Hoopas' official standards exclude Indians who have "dual membership" from sharing in the monies at issue here. In addition, there is no federal statute or regulation barring an Indian from receipt of federal funds simply because he is also a member of another Indian group. Those reasons are enough to refuse to introduce "dual membership" into the standards to govern plaintiffs' shares.¹⁹

C. The Hoopa Valley Tribe's Objections

Cross-appellant Hoopa Valley Tribe (defendant-intervenor in the action) has raised a large number of objections (some of which are the same as the Government's) which amount *in toto* to rejection of almost all of the standards proposed by the trial judge. We do not agree that any of the Tribe's objections call for modification of the decision below.

1. The Tribe insists that Judge Schwartz erred in finding the Hoopa standards (Schedules A, B, C, note 13 *supra*) on

19. We do not pass on the question whether a plaintiff "dual member" who accepts money in this case will then be barred from receiving other monies from different, separate tribes or groups. That is not an issue before us.

the basis of the written documents and refusing to find the "real" or "true" Hoopa standards on the basis of extraneous materials (such as current affidavits) proffered by the Tribe. The short and conclusive answer is that the trial judge's findings as to those standards (based on the official Hoopa constitution and resolutions, approved by the Secretary of the Interior) accord precisely with the 1973 findings of the Court of Claims, [App. 124-31] 202 Ct. Cl. at 959-67, which were confirmed by the Court of Claims in 1981, [App. 37] 661 F.2d at 158. That 1981 decision did not envisage that the trial judge would engage in a new study and new trial to determine for himself what were the "true" Hoopa standards. It follows that those of the Tribe's arguments that rest on the Tribe's current view of the "true" Hoopa standards cannot prevail. The most important of these positions is that Schedule A (note 13, *supra*) required residence on the Square on October 1, 1949, although the official Hoopa standards did not say so.²⁰ The same is true of the contention that Schedule A had some specific "Indian blood" requirement. Another is the contention that the residence mentioned in Hoopa Schedule C (note 13, *supra*) must be continuous and as such should be carried over to Attachment C (note 14, *supra*; Appendix, *infra*); there was simply no such requirement in the official Hoopa standards.

2. If the Tribe is still contending that the date for inclusion in Attachment A (note 14, *supra*; Appendix, *infra*) should be that the plaintiff (or perhaps his allottee forebear) was living on *October 1, 1919* (twenty-five years after allotments to non-Hoopas, just as 1949 was about twenty-five years after allotments to the Hoopas), that argument is obviously groundless. The court's effort is to mold for the non-Hoopa Indians of the Reservation the Hoopa standards used for distribution of the monies in the 1950's and 1960's (which of course used October 1, 1949), not to create a fantasy class

20. The 1973 decision of the Court of Claims specifically found that residence was not required for inclusion on Schedule A. [App. 127] 202 Ct. Cl. at 963 (Fdg. 148).

along new and irrelevant lines which might seem "fairer" to certain people but much less "fair" to others.

3. Hoopa Schedule B (note 13, *supra*) employed subjective standards like "residence not subject to question," "generally considered as members of the Hoopa Valley Tribe," and "permitted to participate in tribal affairs." The trial judge substituted the objective criteria of Attachment B (note 14, *supra*; Appendix, *infra*), but the Hoopa Tribe urges that he should have included the same subjective criteria as the Hoopas put into Schedule B. This suggestion, too, is unacceptable. To avoid protracted further proceedings in this already too-prolonged litigation, objective criteria are necessary and preferable. Moreover, the kind of proof of "tribal participation" or "community acceptance" the Tribe desires cannot be obtained in the case of non-Hoopas of the Reservation. As the Court of Claims held in 1981, [App. 32-33] 661 F.2d at 155, (*see, also*, [App. 115-116] 202 Ct. Cl. at 950 (fdgs 109-110), [App. 117-118] 951-954 (fdgs 113-117), [App. 121-122] 957 (fdg 126), [app. 123-124] 958-59 (fdgs 132-135)), there was no similar tribal organization or entity for those non-Hoopas, and the non-Hoopas (excluded from the Hoopa Valley Tribe) could not have "participated" in such organizations. Conversely, there was no non-Hoopa tribal organization which could "generally consider" plaintiffs as "members" or "permit" them to "participate" in its affairs. (*See also* our discussion, Part I, B, *supra*, of the United States' exception with respect to further individual proof as to receipt of benefits and services.)

4. We also reject the Hoopa Valley Tribe's proposal that any plaintiff should be automatically disqualified if he or she was eligible for membership in the Hoopa Tribe in 1949 and either did not apply or was turned down. The Hoopa Tribe did not distribute applications to everybody who might be eligible [App. 124] (202 Ct. Cl. at 959-960 (fdg 137)), particularly to those who did not live on the Square, and it is indisputable that, in implementing its standards, the Tribe was anxious to exclude persons not considered by them to be Hoopas.

5. The Tribe's objections respecting assignments, census enrollment, the Indian groups to be considered in determining "Reservation blood," and "dual membership," are all essentially the same as those made by the Government, and our reasons for rejecting them are similar.²¹

To sum up, all parties' objections to the trial judge's standards and to his conclusions of law are disapproved.

III. Nature of our Decision

At the close of our opinion we again stress - what the Court of Claims several times emphasized and we have interlaced *supra* - that *all* we are deciding are the standards to be applied in determining those plaintiffs who should share as individuals in the monies from the Hoopa Valley Reservation unlawfully withheld by the United States from them (from 1957 onward). This is solely a suit against the United States for monies, and everything we decide is in that connection alone; neither the Claims Court nor this court is issuing a general declaratory judgment. We are *not* deciding standards for membership in *any* tribe, band, or Indian group, *nor* are we ruling that Hoopa membership standards should or must control membership in a Yurok tribe or any other entity that may be organized on the Reservation. We fully agree with Judge Schwartz that "[s]hould the Yuroks decide to establish a tribe, they are free to vote any membership standard they desire" and we "are not deciding what shall be the membership of a Yurok tribe or of any Indian tribe." We also agree with him "that the decision reached in this court [both the Claims Court and the Court of Appeals for the Federal Circuit] will obtain only for the years until final judgment, and for the years to come while the situation in the Reservation remains the same subject of course to births and deaths."

21. The belated contention of the Hoopa Valley Tribe that plaintiffs, to receive monies under 25 U.S.C. § 407 (related to payments from the fruits of unallotted lands), must be members of an organized Indian entity is unacceptable for reasons given in Part I, B, *supra*, in our discussion of the relationship between 25 U.S.C. § 407 and the current jurisdictional issues.

We note, finally, our fervent hope that this very old case will speedily be concluded in the light of the trial court's judgment now affirmed in its entirety by this court. The case will be remanded to the Claims Court for further proceedings in accordance with this opinion.

Affirmed and Remanded.

APPENDIX

The trial judge's ultimate decision ("Conclusion of Law") was as follows:

"For the reasons set out in the foregoing [opinion], it is concluded that the plaintiffs of the following classes are qualified as Indians of the Hoopa Valley Reservation and are therefore entitled, equally with all others qualified, to shares of the profits of the unallotted trust lands of the Reservation. Judgment is given for these plaintiffs, against the Government and the intervening defendant-Tribe, the payor and recipient of sums due the plaintiffs, of the sums payable, the amounts to be ascertained in further proceedings under [then Court of Claims rule 131(c)]:

1. Allottees of land on any part of the Reservation, living on October 1, 1949, and lineal descendants of allottees living on October 1, 1949.

This class is composed of plaintiffs on attachment A, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order [App. 214].

2. Persons living on October 1, 1949, and resident on the Reservation at that time, who have received Reservation benefits or services, and hold an assignment, or can make other proof that though eligible to receive an allotment, they have not been allotted, and the lineal descendants of such persons, living on October 1, 1949.

This class is composed of plaintiffs on attachment B, which is to be a part hereof and to be furnished to the Clerk, to

the extent practicable, by defendants jointly, within 30 days of this order.

3. Persons living on June 2, 1953, who have at least $\frac{1}{4}$ Reservation blood, as defined below, have forebears born on the Reservation and were resident on the Reservation for 15 years prior to June 2, 1953.

This class is composed of plaintiffs on attachment C, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order [App. 236].

4. Plaintiffs of at least $\frac{1}{4}$ Indian blood, born after October 1, 1949 and before August 9, 1963 to a parent who is or would have been, when alive, a qualified Indian of the Reservation under any of the foregoing paragraphs 1, 2 or 3, or has previously been held entitled to recover in this case.

This class is composed of plaintiffs on attachment D, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order [App. 237].

5. Plaintiffs born on or after August 9, 1963, who are of at least $\frac{1}{4}$ Indian blood, derived exclusively from the qualified parent or parents who is or would have been when alive a qualified Indian of the Reservation under any of the foregoing paragraphs 1, 2 or 3, or has previously been held entitled to recover in this case.

This class is composed of plaintiffs on attachment E, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order [App. 249].

6. Reservation blood, as used herein, shall mean the blood of the following tribes and bands: Yurok, Hoopa/Hupa; Grouse Creek; Hunstang/Hoonsotton/Hoonsolton; Miskut/Miscotta/Miscolta; Redwood/Chilula; Selas/Nongati/Siash; Sermalton; South Fork; Tish-tang-stan; Karok; Tolowa; Sinkyone/Sinkiana; Wallake/Wylacki; Wiyot/Humboldt; Wintun.

7. The motions for summary judgment of all plaintiffs not listed on attachments A, B, C, D and E are denied, without prejudice to renewal within three months after this order becomes final, on a certification by counsel of record to the best of his belief, that the facts summarized in the motion, and to be determined on oral or written hearing, demonstrate either the qualification of the plaintiff under one of the standards adopted by the court or that the denial of qualification of the plaintiff would on the special facts of the case be manifestly unjust.

8. The furnishing by defendants of the above-mentioned attachments A, B, C, D, and E, shall be without prejudice to the rights of defendants to challenge this decision or any part thereof. Recently substituted and former counsel for defendant Hoopa Valley Tribe are expected to cooperate so that no time will be lost in the preparation of the lists to become attachments A-E hereto. Defendants are to furnish the Clerk with the original and 12 copies of each of these attachments.

9. The plaintiffs' motions for summary judgment are denied and granted as provided above."

IN THE UNITED STATES COURT OF CLAIMS
TRIAL DIVISION

No. 102-63

(Filed: March 31, 1982)

JESSIE SHORT et al.)	Indians of a
	) Reservation,
v.	) definition of;
	) Indians of the
THE UNITED STATES)	Hoop Valley
	) Reservation

Harold C. Faulkner, attorney of record for certain plaintiffs, Faulkner, McComish & Wunsch; Heller, Ehrman, White & McAuliffe, of counsel.

Clifford L. Duke, Jr., attorney of record for certain plaintiffs, William K. Shearer, of counsel.

Francis B. Mathews, attorney of record for certain plaintiffs.

Jerry C. Straus, for defendant-intervenor, Wilkinson, Cragun & Barker, of counsel.

James E. Brookshire, with whom was Assistant Attorney General Anthony C. Liotta, for defendant. Duard R. Barnes, Department of the Interior, of counsel.

OPINION

SCHWARTZ, Trial Judge: The history of this case is set out in the opinions of

the court i-202 Ct. Cl. 870, 486 F.2d 561 (1973), cert. denied, 416 U.S. 961 (1974) (determining liability); 209 Ct. Cl. 777 (1976) (allowing interventions and closing the class), and in an opinion of September 23, 1981, denying motions to dismiss and to substitute a plaintiff. 228 Ct. Cl. ___, 661 F.2d 150 (1981), cert. denied, ___ U.S. ___ (March 22, 1982). The present opinion sets standards for the qualification of the roughly 3800 remaining plaintiffs as Indians of the Hoopa Valley Reservation entitled to share in the income of the Reservation.

Suffice it here to say that the court has earlier held the Hoopa Valley Reservation to be one reservation, all of whose peoples, specifically including such of the 3800 plaintiffs as are held to be Indians of the Reservation to be one reservation, all of whose peoples,

specifically including such of the 3800 plaintiffs as are held to be Indians of the reservation, have equal rights in the division of the timber profits from the unallotted trust-lands of the reservation, and thus that the Government has wrongfully paid the profits exclusively to the members of defendant Hoopa Valley Tribe.

Decision on the pending motions for summary judgment on behalf of some 3300 plaintiffs now requires the formulation of standards for the determination of who is an Indian of the Reservation, and the application of the standards to the individual plaintiffs who are the subjects of cross-motions for summary judgment. On a case by case basis, the court has already granted summary judgment to 121 plaintiffs who have established their claim or have been conceded to be Indians of the Reservation.

In its decision of September 23, 1981, the court ruled that the "detailed and carefully drawn" standards used by the Hoopas to determine the membership of the Hoopa Valley Tribe "provide an appropriate basis for determining which of the plaintiffs are Indians of the Reservation." Ct. Cl. NO. 102-63, slip op. at 14 661 F.2d at 158. The motions for summary judgment having been referred to the trial judge by orders of October 1, October 18, and November 12, 1976, he was directed on September 23, 1981, to use the Hoopa standards as the "guideline and basis for determining which of the plaintiffs are entitled to share in the timber payments because they are Indians of the Reservation." The court left it to the trial judge's sound discretion "to determine what, if any, changes should be made in the Hoopa standards and in the application

of the governing standards in individual cases." Id. at 15, 661 F.2d at 159. In this connection, the court spoke of the need for some flexibility so that recognition can be given to the small number of cases in which strict application of the standards would produce manifest injustice.

What follows responds to these directions.

The first, all-important matter to be studied, for it will be determinative of the standards to be applied to the plaintiffs, is the membership standards used by the Hoopas. A prime source for these standards is the court's decision on liability reported in 202 Ct. Cl. 870, and more particularly findings 136-156 made therein and exhibits on the trial (herein "fdg. __" and "pl. exh. __," or "def. exh. __"). Additional tribal records

documenting the development of the Hoopa standards are attached to appendices 43 and 47 to the defendants' joint brief filed August 15, 1977 (herein "App. 43", or "App. 47"). Once the Hoopa standards are determined in Part I, they will be applied to plaintiffs in Part II.

I. The Standards for Membership
of the Hoopa Valley Tribe

The Hoopa Business Council. Since the Hoopa Business Council superintended the development of the Tribe's membership standards, a preliminary word about the Council is appropriate.

The Indians of Northern California, among them the Hoopas, were not politically organized, and except for a brief period in 1915-1916, the first Hoopa representative body was the Hoopa Business

Council organized in 1933. Fdgs. 109, 110, 119-125. Members of the Council were elected from districts within the Square by the Indians residing there. Fdg. 127. The Square is the name of the original reservation, and is identified with the Hoopas, whose Tribe has been permitted to intervene here as a co-defendant. The plaintiffs claim to be Yurok Indians of that part of the Reservation, added in 1891, known as the Addition.

In 1948, the Bureau of Indian Affairs (BIA), in preparation for the distribution of timber profits to the Indians of the Square, suggested to the Council that it "must start to revise the roll and determine who is entitled to receive payment," and that the Council "might pass an ordinance, with the approval of a general council, stating who is a member now, whether children of enrolled members must

be born on reservation to be enrolled, et." Pl. exh. 296. The roll to be revised was doubtless the census roll of the Reservation. This roll in its last years of compilation, 1933-40, listed residents of the Square and of the Addition, together, and also listed some nonresidents of the Reservation. Pdgs. 37-48. A new, exclusively Hoopa membership roll was necessary, if, as was the deliberate intent, those to receive payments were to be limited to residents of the Square deemed to be Hoopas.

The First List of Hoopa Tribe Members. In response to the BIA's suggestion, the Council set about the compilation of a tribal roll. The product of its work was "Schedule A," also entitled "Official Roll as of October 1, 1949, of Members of the Hoopa Valley Tribe Who May Participate in Tribal Benefits and Moneys."

It was approved at a general election on May 13, 1950 and by the BIA on March 25, 1952. Fdgs. 147, 153. It listed 659 names and gave the percentage of Indian blood--type unspecified--of each person listed. Def. exh. 126b.

Creation of Schedule A began with informal discussions of the criteria to be used and the solicitation of the opinions of residents of the Square. A requirement that members possess a minimum degree of Hoopa blood was favored by some of the Council members. Affidavit of R. R. Baldy, App. 44, defs' brief filed August 15, 1977, para. 10. The BIA, however, suggested, and the Council preferred, reliance on the schedules compiled for land allotments on the Square. Baldy affidavit, para. 11; Council Minutes, July 1, 1948, pl. exh. 744, 1; see fdgs. 78-100.

Allotments were first made on the Square in 1896 by an agent named Turpin, but these were not approved. Fdg. 88. In 1918, agent Mortsolf prepared a new schedule, which was approved in 1922. Fdg. 90. Because the Turpin schedule had not been approved, and because the Council apparently believed that "Captain Turpin scheduled allotments in a haphazard way to many non-Hoopas," the Council decided to use the names on the Mortsolf schedule. These latter, they believed, were limited to Hoopas who with their descendants were thought to be the most inclusive group considered part of the Hoopa Community. Baldy affidavit, paras. 11, 12. The Mortsolf schedule of allottees, and their descendants, with the omission of two allottee families known to be non-Hoopas, accordingly became Schedule A, the first

list of members of the Hoopa Valley Tribe.
Id., para. 12.

A minimum blood degree was not required, although some concern for blood was demonstrated by the request, in the applications for membership, for the justification for the application and a specific inquiry for the degree of "Hoopa Indian blood." Fdg. 138. Schedule A itself, under a heading reading only "Degree of Blood," listed the blood of each member next to his name, def. exh. 136b, Schedule A, and it is clear that the blood of a number of those listed included non-Hoopa Indian blood. Exhibits 1, 23 (List II), to Pl's Requests for Admissions, filed Feb. 28, 1977, Defs' Admissions Nos. 1, 3, 126, filed April 14, 1977.

Schedule B. Not long after the creation of Schedule A, the Council came

to believe that some longtime Hoopa residents of the Square were not included in Schedule A, though their or their ancestor's failure to receive an allotment "was through no fault of their own." Fdg. 139. Allotments on the Square had been discontinued in 1933, before all those eligible had received parcels, fdg. 96, and so it was quite possible that some Hoopa residents of the Square had been eligible, but unsuccessful for lack of land.

Another list was therefore created. It was called Schedule B and entitled "Addition to the Official Roll of Members of the Hoopa Valley Tribe Who May Participate in Tribal Benefits and Moneys." Essentially a supplementation of Schedule A, Schedule B contained the names of 18 Indians who had applied for and been excluded from Schedule A, but whom the Council considered, notwithstanding their

failure to receive an allotment, to be "true Hoopas" and their descendants. Fdgs. 139, 142. At a Council meeting in December 1951, the difference between Schedules A and B was thus described by the chairman; "[T]he A roll was based on the allottees and their descendants, [and] the B roll were those that were left out, or they didn't apply" Pl. exh. 764, 1.

Both Schedules A and B were approved at a general election of May 13, 1950, and by the BIA on March 25, 1952. Schedule A was approved as a whole, in one vote. In the case of Schedule B, however, the 18 candidates, by name or family group (e.g., "George Nixon, Sr. and children") were voted on and approved separately. Fdg. 147; pl. exh. 561. The notice of the election stated that its purpose, inter alia, was "to adopt officially into the

Hoopa Valley Tribe" members listed on Schedules A and B "to enable them to share in Hoopa Tribal benefits and moneys." Fdg. 141. The persons on Schedules A and B now constituted the entire tribal membership as of October 1, 1949, thereafter known as the base roll.

The Constitution. Concurrently with the development of Schedules A and B, the BIA suggested that the Council revise the Hoopa "Constitution and By-Laws" first adopted in 1933 when the Council was established. Council Minutes, Oct. 7, 1948, pl. exh. 746, 1. See fdgs. 123-125. The Draft proposed by the BIA provided, in Section 1 of Article IV, for tribal membership of the children of members and for corrections to the membership roll, and in Section 2, for rules for the adoption of new members and for termination of membership (fdg. 145):

Article IV.

Section 1. The membership of the Hoopa Valley Tribe shall consist as follows:

(a) All persons of the Hoopa Valley tribe as of October 1, 1949, provided that corrections may be made in the said roll by the Business Council within five years from the adoption and approval of this Constitution, subject to the approval of the Secretary of the Interior or his authorized representative.

(b) All children born to members of the Hoopa Valley Tribe who are at least one-quarter degree Indian blood.

Section 2. The Business Council shall have the power to make rules governing the adoption of new members or the termination of membership in the tribe.

No specific degree of Hoopa or Indian blood had been required for original membership under Schedule A or B, and a number of Indians with little or no Hoopa blood became members by inclusion on Schedule A. Yet the blood of the persons on the base roll was in the Constitution

described as "Hoopa Indian blood," and, further, the 1/4 blood degree to be required of their children, for membership, was to be "Indian blood."

The Council repeatedly used the term "Indian blood," an not "Hoopa blood" or "Hoopa Indian blood," to describe the blood requirement for after-born children, leaving no doubt that other than Hoopa blood was intended to be included. For instance, in the notice of the election to adopt the Constitution and Schedules A and B, the Council said that the election would "determine the minimum degree of Indian blood which members of the Hoopa Tribe must have to be eligible for Tribal enrollment in the future." Fdg. 141.

The degree of blood to be required of the children was put up for vote. The vote of the 98 electors on various degrees was very close: for "limiting future

tribal enrollment" to 1/2 degree Indian blood, there were 15 votes; for 1/4 degree, 42 votes; and for 1/8 degree, 41 votes. Pl. exh. 561. The electors, composed exclusively of Schedule A listees, fdg. 142, thus approved the Constitution as proposed by the BIA, with the 1/4 Indian blood degree requirement unchanged. The Constitution was so adopted on May 13, 1950; the BIA added its approval on Sept. 4, 1952. Fdgs. 144, 145, 153.

With the adoption of the Constitution and the two Schedules, the official tribal roll comprised the 659 allottees and descendants on Schedule A, and the 18 deserving of allotment and their descendants added by Schedule B, all living on October 1, 1949. The Constitution contemplated only three types of changes in membership, all provided for in Article IV; (1) the addition of "[a]ll children

born to members of the Hoopa Valley Tribe who are at least one-quarter degree Indian blood" (herein "afterborn children"); (2) "corrections" in the roll by the Council within five years of the approval of the Constitution, i.e., until September 4, 1957; and (3) additions or subtractions under rules which the Council might make "for the adoption of new members or the termination of membership in the tribe."

Schedule C. Schedules A and B omitted many applicants for enrollment, among them some long-time residents of the Square. To remedy the omission, standards were thereupon established, in April 1953, pursuant to the Council's Article IV, Section 2 power to make additional membership rules, for a third list of members, Schedule C. a Schedule C required (1) 15 years of residence on the Square, prior to June 2, 1953, when applications

closed; (2) forebears born on a rancho on the Square; and (3) at least 1/4 Hoopa blood. A special screening committee would pass on applications. Fdg. 152; pl. exh. 572A. While the available records do not expressly set out the date by which the 15-year residence requirement had to be satisfied, the date of June 2, 1953, by which applications for Schedule C were to be submitted, is the most reasonable. This is the Government's position.

Schedule C, listing 18 successful applicants, was adopted on June 10, 1954. Fdg. 152(c); def. exh. 137f. When a member asked, at a Council meeting on December 6, 1951, at which Schedule C was first being considered, what was the basis of the C roll, the chairman replied that "the C roll were those that didn't belong here, but were living here." Pl. exh. 764, 1. No attention seems to have been

paid to the difference between the "Hoopa" blood required by Schedule C and the "Indian" blood requirement for children of members in the Constitution.

Redefinition of Membership Standards--1959. Within the five years allowed by the Constitution, the Council by resolution added members by way of corrections to the base roll. See, e.g., def. exh. 137c. After-born children were also admitted, pursuant to Article IV, Section 1(b) of the Constitution. See def. exh. 137d, 2; def. exh. 137g. Applications were rejected in numerous letters from the Council. See App. 47.

Some of the Council decisions, by secret ballot without explanations of the applicant's deficiencies, created controversies. See, e.g., Council Minutes, April 28, 1955, pl. exh. 782, 2; May 16, 1955, pl. exh. 783; May 11, 1956,

pl. exh. 785, 2-3. One such controversy centered on the denial of membership applications, under the standards of Schedule A, by allottees in fact, who were not listed in the 1922 Mortsolf allotment schedules, but whose allotments were approved when schedules containing their names were resubmitted in 1933. Fdgs. 90, 93, 95, 96. At least four Indians similarly situated, however, were included on Schedule A. App. 43, exh. 36. A BIA official requested clarification, on the ground that Schedule A was nowhere stated to be limited to the Mortsolf schedule allottees, and the "common definitions given" of Schedule A were that it consisted of "[a]ll allottees or direct descendants of allottees living as of Oct. 1, 1949," a definition obviously including allottees in fact though not listed by Mortsolf.

Such controversies led to the adoption on November 6, 1959, of a resolution to provide, among other things, a set of definitions which would "accurately describe the procedures followed and clarify the intent not heretofore expressed in the membership requirements as set forth in Article 4 of the Constitution and Bylaws of the Hoopa Valley Tribe approved September 4, 1952." Fdg. 155. The need to silence charges of arbitrariness and inconsistency levied at the Council was mentioned.

In pursuance of the purpose to define the terms used in the Article IV membership standards, paragraph 1 of the resolution defined the term "Hoopa Valley Tribe" used in section 1 of Article IV of the Constitution, to include the "remnants of the Hunstang, Hupa, Nixkut, Redwood, Saias, Sermalton, and Tish-tang-atan Bands

of Indians, residing within the twelve-mile square . . . and their descendants." Fdg. 155.

Schedule A was defined, in paragraph 3 of the resolution, as the group of Mortsolf allottees and their descendants, both living on October 1, 1949. Fdg. 155 (the date Oct. 1, 1941, in finding 155 is an error and should read "Oct. 1, 1949"). When, however, the BIA continued to press its point that Schedule A actually included allottees in fact who were not on Mortsolf's schedule, the Council acceded and in a resolution of December 11, 1959 redefined Schedule A as consisting of "allottees living on October 1, 1949 and descendants of allottees living on October 1, 1949." Fdg. 156. A separate resolution of the same date permitted reexamination of previously rejected

applications by allottees in fact. Pl. exh. 570.

Schedule B was defined, in paragraph 4 of the resolution, as consisting of those living on October 1, 1949, who had filed enrollment applications at the same time as those eventually included on Schedule A, who were eligible for, but did not receive allotments, whose residence on the Square "was not subject to question," and "who were generally considered as members of the Hoopa Valley Tribe and permitted to participate in Tribal Affairs, and their descendants living on October 1, 1949." Fdg. 155,

Schedule C, and the difference between Schedules A and B on the one hand and C on the other, were in the resolution explained thus: Schedules A and B were described in paragraph 2 as making up the official roll of the Tribe referred to in

the Constitution, and paragraph 5 defined the constitutional power to correct the roll as limited to those who qualified under those Schedules. Schedule C was in paragraph 6 defined as those Indians who had applied within a 60-day period ending June 2, 1953, and were qualified by a minimum 15 years residence on the Square, "forebearers" [sic] born there, and at least "1/4 degree Hoopa blood."

The difference between A and B on the one hand and C on the other lay in the inheritability of membership of members' children. The child born on or before October 1, 1949 of a Schedule A or B member automatically became a member by descent alone. The child born on or before October 1, 1949 of a Schedule C member did not. That child could become a member only on qualifying under the tripartite requirements of Schedule C.

Once elected, however, the Schedule C member could pass, equally with Schedule A and B members, his membership to his children under the provision of Article IV, Section 1(b) of the Constitution for after-born children, i.e., children born after October 1, 1949. This was the effect of the last paragraph of the Resolution, entitled "Procedures" (Fdg. 155):

The C Schedule established certain specific requirements to be met by those persons who were ineligible for enrollment under the requirements of Schedule A and Schedule B. Eligibility was determined on an individual basis and did not automatically pass from a parent to a child born prior to October 1, 1949. However, once an individual was approved for membership as a C Schedule applicant, he acquired the same rights and privileges as other enrolled members.

Finally, the resolution defined the term "children" used in the after-born child provision of Article IV, Section 1(b) of the Constitution as "restricted to

persons born after October 1, 1949." This provision confirmed the distinction between those Indians living on October 1, 1949, who could become members on satisfaction of Schedule A or B requirements, and those born thereafter. The Indian born on or before October 1, 1949, seeking admission by the standards of Schedule A or B, need only show his allotment, or descent from an allottee, for membership under Schedule A, or, for membership under Schedule B, that he was a "true Hoopa" in the sense of Schedule B or descended from one. The Indian born after that date could become a member only by derivation from a parent who was a member, together with a person 1/4 degree of Indian blood.

For the Indian seeking Schedule C membership, birth before 1949 was only the beginning. That Indian was required to

show 15 years of residence before 1953, forebears born on the Square and 1/4 degree Hoopa blood. The child of a Schedule C member born on or before October 1, 1949, could not become a member, automatically, by virtue of parentage, but would have to possess, personally, the Schedule C qualifications of 15-year residence, Reservation forebears and 1/4 Indian blood. Those born to a Schedule C member after the date, however, would qualify under the same after-born children standards as the after-born children of A and B parents.

1963--Amendment of the Constitution.

The constitutional requirement of 1/4 "Indian blood" for after-born children members was in 1961 proposed to be amended to read 1/4 "Hoopa Indian blood." The amendment, adopted at a tribal election of June 23, 1961, provided: "That future

enrollment of children born to members of the Hoops Valley Tribe must be limited to persons of: 1/4 Degree of Hoopa Indian Blood." App. 43, exh. 62.

The whereas clause of a resolution, adopted on the following September 15, declared that it was the Council's intention to consider all the blood of a member parent as Hoopa blood; that "a Hoopa Indian was any person shown on the approved Roll Schedules "A", "B", or "C" and . . . the degree of Hoopa Indian blood of each such person was that degree of blood shown on the approved Roll Schedules." App. 43, exh. 63.

This was something of a fiction, as has been seen above in the discussion of the Indian, non-Hoopa blood of some Schedule A members; however, it was obviously intended and not merely a misdescription of the blood of the

members. This resolution explained at greater length that the after-born child could find its newly required "Hoopa Indian blood" only in the "Indian blood" of those of its parents who were members. In the future, the resolution stated, a "child born to a member . . . to qualify for future enrollment . . . must possess at least 1/4 degree of Hoopa Indian blood, such degree of quantum of blood to be determined by computing the sum of one half the degree of Indian blood of each parent as shown on the approved Roll Schedules of the Hoopa Valley Tribe." App. 43, exh. 63.

Tolerance had been shown for members with Indian, non-Hoopa blood in the original development of Schedule A. Further evidence of the Tribe's tolerance toward other than Hoopa Indian blood is found in the constitutional provision that

after-born children would be required to have 1/4 Indian, not Hoopa blood. This was now to be changed. Intermarriage between tribal members and other Indians was by now apparently creating unwanted numbers of after-born children with the required degree of Indian blood, but from non-member parents. Either there were too many after-born children of other than Hoopa blood or simply too many after-born children members. To limit this expansion in membership, the "Indian" blood required from the child was changed into "Hoopa Indian" blood, to be derived only from the blood of the parent member or members, all of whose Indian blood whether or not Hoopa would now be known as Hoopa blood.

The BIA urged the Tribe to make the "clarifying" language of the September 15, 1961 resolution, a part of the Constitution. This was done in a tribal

election of June, 1963, by an amendment of Section 1(b) which changed the blood required of after-born children from "Indian" to "Hoopa Indian" and provided that the required blood could come only from the blood of the member parents. App. 43, exh. 67. After the change, Section 1 therefore provided that the Hoopa Valley Tribe membership would consist of those on the official roll, including corrections thereto, and (id.):

All Children of at least one-fourth (1/4) Degree of Hoopa Indian Blood born to members of the Hoopa Valley Tribe after the effective date of this amendment. Degree or quantum of blood to be determined by adding one-half the degree of Indian blood of each parent as shown on the approved Roll Schedules of the Hoopa Valley Tribe.

The election ballot for the approval of the change in section 1(b) contained the following (id.):

Note: Indian Blood of members as shown on the approved Roll

Schedules is considered Hoopa Indian Blood for purposes of determining eligibility for future enrollment.

The BIA approved the amendment, effective August 9, 1963.

These changes demanded Hoopa blood from the after-born child, made explicit the fiction that the Indian though non-Hoopa blood of an original member would be considered as Hoopa blood for purposes of inheritability of membership of the member's after-born children, and added a rule that only the blood of a member-parent could be counted in calculating the Hoopa blood required of the child for membership. Since the member-parent's Indian blood was declared to be Hoopa blood, and the required blood of the child applicant could come only from the member-parent, the blood required of the child was therefore necessarily "Hoopa Indian blood," and was so described. One

effect of the change was that even the Hoopa blood of a non-member parent could not be counted towards the 1/4 degree of Hoopa Indian blood required of the child.

The documents themselves do not make this last interpretation crystal clear, but all the parties seem to agree that the effect of the formula is to count only the Indian blood of member parents and not the blood of nonmember parents, even if some of a nonmember parents' blood were Hoopa.

1972--Amendment of the Constitution.

In 1972, a new Section 3 was added to Article IV, providing that the Council should draft and submit to a referendum an enrollment "ordinance," which would set forth the procedures governing tribal membership in accordance with the article. No such enrollment ordinance has been brought to the attention of the court.

Secondly, and more significantly, Section 1(b) of Article IV was again amended. The word Hoopa, describing the after-born child's 1/4 Indian blood requirement, was removed from Section 1(b) of Article IV. This was the word added in 1963; the change left the blood described as it was originally: "1/4 Indian blood." The method of computing blood degree which counted only the blood of enrolled parents, however, was retained. App. 43, exh. 72.

Section 1(b) would now read (id.):

(b) All children, born to members of the Hoopa Valley Tribe, who are at least on-quarter degree Indian blood, after the effective date of this amendment. Degree or quantum of blood to be determined by adding one-half the degree of Indian blood of each parent as shown on the approved Roll Schedules of the Hoopa Valley Tribe.

The clauses of the first sentence in the 1963 text were rearranged, but the

only real change was the omission of the word "Hoopa" from the statement of the required 1/4 degree of Indian blood, and the omission to repeat the statement made in the 1963 election ballot--that all the Indian blood of members is considered to be Hoopa blood.

Defendants have suggested that the omission of the word "Hoopa" from the former phrase, "Hoopa Indian blood," may have been a clerical error. The source of the suggestion is a BIA memorandum dated in 1976. App. 43, exh. 73. A contemporaneous letter by a BIA area director, written a week after the tribal election in 1972, and recommending approval of the revised Constitution, speaks of only one change, which "should make membership easier." App. 43, exh. 70. The reference to only one change is doubtless a reference to the prominent

addition of Section 3. The neglect in this letter to mention the omission of the word "Hoopa" is consistent with the suggestion that the omission was unintentional.

The change from "Hoopa Indian blood" to "Indian blood," whether intentional or not, merely removed an unnecessary fiction from the two references to blood in subsection (b), and left the meaning of the 1963 text intact. The 1963 text had used two phrases to describe blood: "Hoopa Indian blood" to describe the blood to be required of the children and "Indian blood" to describe the blood of the other member parents. Both meant the same thing; as expressly stated in the note to the 1963 election ballot, the Indian blood of member parents was "considered" to be Hoopa blood. The 1972 rewriting, by omitting both the word Hoopa from the

Indian blood required of the child and the fiction that Indian blood of the member parent was Hoopa, could therefore provide, realistically, that the blood required of the child, but to be derived only from the member-parent, was "Indian blood." The 1963 reform, by which only member-parents' Indian blood, however described, could count toward the 1/4 Indian blood required of the child, continued unchanged.

Recapitulation of Membership Standards. The sources of Hoopa tribal membership are the three schedules A, B and C and the Constitution. Schedule A members were allottees on the Square, in fact, or were listed by name on the preferred allotment schedule, and their descendants. Schedule B members, elected on a case by case basis to remedy what were believed to be inadequacies in Schedule A, were residents of the Square

considered part of the Tribe, who had failed to get an allotment through no fault of their own, and their descendants. Schedules A and B were limited to persons living on October 1, 1949. Schedule C members were a group very differently constituted. Birth before October 1, 1949 was inconclusive, as was the lack of an allotment. Schedule C provided a source of desired membership in addition to possession of an allotment. It contained unallotted Indians, elected individually, who met three requirements: residence on the Square for "at least 15 years," prior to mid-1953, forebears born on the Square and at least 1/4 Hoopa blood.

Membership by listing on Schedules A, B or C, once accomplished, gave equal rights. All, whether on Schedules A, B or (after election) C, were equal with respect to inheritability of membership,

with one exception for the children born prior to October 1, 1949, of Schedule C members. These children were not included in Schedule C, and could not become members on showing descent from their member parent, as could the similarly born children of Schedule A and B members. They could become members only on meeting the requirements of Schedule C. Once, however, the Schedule C applicant became a member, his children born after October 1, 1949 could become members under the after-born children provision of the Constitution, equally with the after-born children of Schedule A and B members.

II. The Definition of Indians of the Reservation

Having determined, as best as possible, the standards for tribal

membership of the Hoopas, at various periods since they were first formulated, the second and final task is the determination of the qualification of the plaintiffs as Indians of the Hoopa Valley Reservation, by analogy to the standards of the Hoopas.

A. Allottees and their Descendants

The parties are agreed that Hoopa Schedule A dictates that allottees anywhere on the Reservation, and descendants of allottees to some point in time, are entitled to be regarded as Indians of the Reservation. The major disagreement, whose resolution will have substantial significance in terms of numbers, is over an ending or cut-off date of birth for qualification by such descent alone, before additional or alternative

requirements, of blood or whatever, are imposed.

Plaintiffs urge that the cut-off date for plaintiffs, if any be imposed, should be April 23, 1976, when the court closed the class of plaintiffs, 209 Ct. Cl. 777; that there is no significance for the plaintiffs in the October 1, 1949 cut-off of the Hoopa after-born children, beyond which blood is required and descent from an allottee, alone, does not qualify. Plaintiffs' view is that the gathering together of the Yuroks for purposes of suit has, for them, the same significance as the gathering together in 1949 to create a tribal roll had for the Hoopas. This view would qualify all plaintiffs descended from an allottee, no matter when born, by analogy to Hoopa Schedule A, minus its requirement that the member be living on October 1, 1949.

Alternatively, the plaintiffs reach the same result by a contention that a blood-degree requirement for children born after a cut-off date may be imposed by an existing base-group of members prospectively on future members, but may not be imposed on the initial group themselves. Either theory avoids the subjections of the descendants of allottees among the plaintiffs, no matter how remotely descended, to the requirements of blood which governed the Hoopas born after 1949. All plaintiffs who are descendants of allottees, of however little Indian blood and of whatever length of residence on the Reservation, would become members under one or the other of the plaintiffs' theories.

The defendant Tribe argues in opposition that a cut-off date of 1976,

when the plaintiffs' class closed, is really no cut-off date since it cuts off no one; that many of the 3,000 plaintiffs it would qualify are "in truth, non-Indians; . . . have never lived on the Hoopa Valley Reservation; and . . . have no connection with the Hoopa Valley Reservation other than as plaintiffs in this lawsuit." Hoopa Valley Tribe brief filed Nov. 23, 1981, 5. Plaintiffs respond that it is not unfair to entitle plaintiffs qualified by its theory; that their number is approximately double the 1600 current membership of the Tribe; and that the population of the Addition has since about 1910 been double that of the Square.

The two defendants, united in opposition to plaintiffs' cut-off date, differ in the date they propose. The Government urges 1949, the date the Hoopa

Tribe used, and the Tribe urges a much earlier date.

In support of its proposed date of 1919, the Tribe argues that those listed on Schedule A comprised the Hoopa community, "all of whom were believed to be, and all but 10 were in fact, of Hoopa blood, most of whom were residents of the Square, and all of whom were recognized as members of the Hoopa community." Id., 13. Further, the Tribe argues, the Hoopas would have used a blood requirement even in 1949, but for the absence of reliable geneological records, and most of the original Schedule A members could have satisfied a blood requirement.

Critical to the validity of a roll comprising descendants of allottees as descriptive of the reservation community, continues the Tribe, is the proximity in time between the allotment and the

creation of the roll. This presumably is because of the dilution over time of the connection of the roll members with the reservation, by emigration and by marriages away from the Reservation. The 1949 date used by the Hoopas was 25 years after the final submission of the Mortsolf allotment schedules. Therefore, the Tribe concludes, to achieve a comparable result in applying the Hoopas' standards to plaintiffs to describe the Yurok community, the cut-off date for plaintiffs should be a date 25 years after the submission of the allotment schedules for the Yurok part of the Reservation. See fdgs. 83-85. This date would be 1919.

The Tribe would therefore end at October 1, 1919 the qualification of plaintiffs by descent from an allottee, and impose a 1/4 blood requirement on all plaintiffs born after that date,

comparably to the imposition of such a requirement by the Hoopa Constitution on members' children born after October 1, 1949. This contention, were it adopted, would make eligible some 300 plaintiffs by analogy to Schedule A, as compared to the approximately 3,000 qualified by the plaintiffs' theory of no effective cut-off date at all and the Government's theory, now to be described, which would qualify 1200.

The Government's position is essentially that the court should apply to the plaintiffs the precise standards of the Hoopa Valley Tribe; that in the interest of strict equality, the 1949 date of the Hoopa Constitution should be applied to the allottees and their descendants among the plaintiffs, because it was the date used by the Hoopas and was integral to the Hoopas' membership

standards. The Government would thus first qualify allottees on any lands in the Reservation and their lineal descendants living on October 1, 1949. Lineal descendants born thereafter would be qualified on a basis analogous to that of the Constitution--birth to a qualified person plus a 1/4 degree blood requirement whose nature is discussed below.

The Government starts its argument for strict application to plaintiffs of the Hoopas' standards with the proposition that the Yuroks should, in the 1940's, have been considered Indians of the Reservation for the purpose of the per capita distributions, but were erroneously excluded from participation. Since they should have been permitted to qualify when the Hoopa Tribe was organized for that purpose--per capita distribution--they now should be given treatment as uniform as

possible with that given to Hoopas at the time of the distributions. Toward this end, the court has ordered adoption of the Hoopas' standards.

To the plaintiffs' charge that the 1949 cut-off date was an arbitrary choice by the Hoopas and without significance for the plaintiffs, the Government responds that the 1976 date advocated by plaintiffs is no less arbitrary, and is moreover patently result-oriented.

The Government responds specifically to plaintiffs' reliance, for their argument against any blood requirement, on the fact that 213 of the 1600 members of the Hoopa Tribe have less than 1/4 Hoopa/Yurok blood. See Exhibit 1 to Pls' Requests for Admissions filed Feb. 28, 1977; Defs' Admissions Nos. 1, 2A, 3 filed April 14, 1977. Almost all of the 213 are on analysis, the Government says, seen to

have blood permitted and required by the Tribe's standards. The 213 are broken down by the Government as follows:

151 are "child members," i.e., born post-1949 with at least 1/4 Indian blood. Of these 151,

80 were pre-1963, when the requirement was only 1/4 Indian blood and so they satisfied the blood requirement; and

71, the remainder, are children who were born after 1963; their enrolled parents may have had non-Hoopa Indian blood, which counted as Hoopa blood under the 1963 amendments to the Constitution.

34 are listed on Schedule A and thus had no blood requirement; in fact they have 1/4 Indian blood; and an additional

22 are also Schedule A listees, had no blood requirement and thus permissibly may have less than 1/4 Indian blood.

207, the total, is thus accounted for as permissibly having less than 1/4 Hoopa/Yurok blood, leaving unaccounted for only six after-born child members of the total of 213 with less than 1/4 Indian blood.

This analysis is said to show that 185 of the 213 with less than 1/4 Hoopa/Yurok blood have at least 1/4 Indian blood; that this amount of Indian blood is sufficient for the 80 of the 151 child members who were born between 1949 and 1963 and might be proper for some or all of the remaining 71, born after 1963, depending on the degree of their enrolled parents' blood. Beyond the 151, 56 were Schedule A listees, who had no blood requirement, and of these ;34 had at least 1/4 Indian blood. The total of the 151 and the 56 is 207, leaving only 6 of the entire group who are post-1949 and have less than the 1/4 Indian blood required of after-born children. Of the entire 213,

therefore, there are only 6 who surely represent errors in the process. This degree of error the Government would dismiss as de minimus.

The plaintiffs' argument that a group of existing base list members can impose a blood degree requirement only prospectively is without relevance here. The argument dates to a battle of tribal constitutions the parties engaged in during the extensive briefing before the court determined that eligibility standards for the plaintiffs should follow the Hoopa standards. At that time, defendants invoked a number of tribal constitutions which utilized a blood requirement for membership, to fuel an argument that a 1/2 or 1/4 blood degree requirement should be impose on all plaintiffs. Plaintiffs responded by showing that most of the constitutions

applied a blood requirement only "prospectively," i.e., to later members and not to the original core group, who were usually admitted solely on the basis of census or allotment rolls. The exceptions, they claimed were generally reservations very small in area and in population.

Such arguments, from what most large tribes have done in framing their constitutions, are irrelevant here. Tribal membership standards are not here being devised. The question is not what a base group has power to impose on itself, but which of the plaintiffs should in fairness share equally with the Hoopas in the distribution of the timber profits. If fairness requires that plaintiffs be divided by a date of birth into an earlier group based on allotments and a later-born

group based on birth and blood, then so be it.

On this approach, the Government's arguments commend themselves. The Hoopa standards were explicitly adopted as a set of rules for the distribution of the suddenly gushing profits from the reservation timberlands. Distribution should have been made to all the Indians of the Reservation, not those of the Square alone; the court has so held. Those denied distribution have sued for their proper share, claiming that they, Indians of the Addition, are equally Indians of the Reservation with the Indians of the Square, and therefore equally entitled to share in the profits. As a matter of equality with those who have received payments, those to be added to the group of payees should be defined

by the same standards as defined the recipients until now.


In the present circumstances of per capita distributions already made to fewer than those entitled, it is therefore sensible and equitable to define the group improperly deprived of payments by the same definitions as identified those who received payments, less the factors wrongfully used to exclude the claimants from the distributions. The result may not be the same as it would have been had the plaintiff Yuroks participated in the formulation of the definitions of the proper payees in 1949, as they should have in law, but we cannot turn the clock back. The next best thing is to pay to those of the plaintiffs, deprived of payments by the 1949 standards, as would have been paid by those 1949 standards, had they included all the Indians of the

Reservation. The money at stake will thus have been distributed evenly, to the Hoopas and the plaintiffs, by the same standards.

Accordingly, the first class of plaintiffs held to be Indians of the Reservation will be allottees, in fact, of land anywhere on the Reservation and lineal descendants of allottees living on October 1, 1949.

Adoption of this standard is not a decision that the Hoopa membership standards govern Yurok tribal membership standards or, conversely, that membership in a Yurok tribe should be defined as is membership in a Hoopa tribe. Should the Yuroks decide to establish a tribe, they are free to write any membership standards they desire. The court is not deciding what shall be the membership of a Yurok tribe or of any Indian tribe. The

question before the court is which of the plaintiffs are the Indians of the Reservation entitled to share equally, in the per capita distributions of the timber profits of the non-tribal Reservation, with the improperly limited class of payees chosen by the Government. It should also be clearly understood that the decision reached in this court will obtain only for the years until final judgment, and for the years to come while the situation on the Reservation remains the same, subject of course to births and deaths. Should the situation change, for example, by the creation of a Yurok tribe or a tribe representing the entire Reservation, or otherwise by legislation or other unforeseen event, distributions may be made in the light of the changed situation, if otherwise lawful.



1. Equivalents to Allotments--
Assignments. Beginning in 1933, when tillable land in the Square became too scarce to allot land permanently to all those eligible, the Government instead "assigned" unallotted parcels in the Square to applicants for allotments. Fdg. 96. The same eligibility criteria were used, plaintiffs say, as for allotments, and it is therefore argued that assignees should be treated as are allottees, and that they are their descendants, living on October 1, 1949, should be held qualified as Indians of the Reservation.

Defendants contend that the questions of the equivalence of assignments to allotments is not ripe for decision, even aside from the bar on the use of assignments from the fact that the Hoopas did not base membership on assignments. A list of assignees and their descendants

(who are not also allottees or descendants of allottees) has only recently been compiled by plaintiffs, and appears in a reply brief, and, defendants continue, there has been no time for the exploration of the facts as to the prevalence and significance of assignments, instead of allotments, on the two parts of the Reservation. The assignees and descendants listed by the plaintiffs number 32.

There is little reason to doubt the allegation that the same qualifications were required for an assignment as for an allotment, and that only scarcity of land accounted for the cessation of allotments and the making of assignments instead. An assignment in conjunction with other qualifying characteristics of blood and residence appears in the history of several of the sample plaintiffs held to

be Indians of the Reservation. Fdgs. 193, 199, 205, 207, 211. Possession of an assignment seems as much an indication of connection with the Reservation as possession of an allotment. Both equally show attachment to the land; the nature of the title does not matter in the present inquiry. As an original question, therefore, an assignment would be regarded as the equivalent of an allotment, in determining whether a candidate is sufficiently connected with the Reservation to share in the distribution of its profits.

The barrier, to such a ruling is, of course, the decision made that the standards for the plaintiffs are to be based on the standards for the Hoopas, who did not utilize assignments in formulating the Schedule A list of allottees and descendants. If this ruling is to be

modified, for qualification of some small number of cases of plaintiffs who can qualify only on the basis of an assignment held by the plaintiff or an ancestor, it can only be on the basis of an avoidance of manifest injustice, referred to by the court in its decision of September 23, 1981. That will require the consideration of the facts of individual cases, not now presented, and which defendants reasonably say they cannot in the present circumstances contend with.

Nevertheless, it seems plain enough that possession of an assignment is vivid proof that the holder was entitled to an allotment and without fault did not receive one. Accordingly, assignees are also allocable, in terms of standards for qualification, to the standard to be discussed below based on Hoopa Schedule B.

2. Equivalents to Allotment--Census

Enrollment. Plaintiffs contend that enrollment on a census taken on the Reservation should be regarded as an entitlement criteria equivalent to allotment. Both defendants object on the ground that the Hoopas did not rely on the censuses on the Reservation and, indeed, by the adoption of the allotment schedules implicitly rejected the census as a membership criteria. Plaintiffs list some 280 census enrollees or descendants of enrollees, who are not allottees or descendants of allottees, but without categorization of the descendants by date of birth, whether before or after 1949.

Plaintiffs' position has substantial support. Census enrollment, at least in the later censuses on the Reservation, came to be accepted as equivalent to reservation Indian status for at least

some purposes, such as Reservation educational and perhaps other benefits.

Finding 46 so indicates:

Some censuses listed off-reservation people, with off-reservation addresses. From about 1930, inclusion in the census was based not on residence but upon a concept of enrollment on the reservation equivalent to entitlement to be regarded as a reservation Indian (see findings 199, 207, 211, infra [concerning three sample plaintiffs who were listed on censuses])

Whether the reservation status regarded as created by census enrollment would have been thought, then, to include such a benefit as a right to share reservation profits, equally with Hoopa and Yurok allottees, cannot now be known. Further, census enrollees were regarded by the Government as qualified to vote in the elections proposed in 1979 towards the creation of a Yurok Tribe. 44 Fed. Reg. 24536-40 (1979).

It is not a valid criticism of census enrollment as a source of membership standards that the Hoopas did not use the censuses. The separate censuses of the Square did not distinguish between Hoopas and non-Hoopas. Fdgs. 37, 38, 40, 42, 43, 45. Also, in the last years of the census, 1933-40, Indians of the Square were listed together with those of the Addition. Fdg. 48. Therefore, since the Hoopas were interested in limiting their membership, more specifically in excluding Yuroks, their failure to use the census rolls should not guide the court.

Nevertheless, census enrollment will not, without more, be held the equivalent of an allotment in qualifying a plaintiff as an Indian of the Reservation entitled to share in timber revenues. One reason is that though census enrollment bespeaks a tie with the Reservation, it does not

establish an attachment to the Reservation equal to that of allotment, which is ownership of the land. Another is that at least some census enrollees lived off the Reservation, while residence was a requirement for receipt of an allotment. See fdgs. 77, 80, 81, 84, 87, 91. A non-resident was in at least one case granted an allotment on condition that he move to the Reservation. Fdg. 104.

Should it appear that a plaintiff enrolled on a census and possessing other ties to the Reservation not meet any of the standards here determined and yet present a case in which denial of qualification would be manifestly unjust, relief will be available. This could have been so in the case of the sample plaintiffs who without any predecided standards were held on the trial of liability to be Indians of the Reservation on the facts of

their histories, which included census enrollment, though not allotment. See fdgs. 199, 207, 211.

To avoid manifest injustice, plaintiffs who can be qualified only by virtue of weight to be given to a census enrollment, may move their cases for decision, on their special facts, after the cases of the bulk of the plaintiffs are reduced by the application of the various standards adopted herein.

B. A Standard Based on
Hoopa Schedule B.

Schedule B members were defined in the resolution of November 6, 1959 as those living on October 1, 1949 and applying for tribal membership at the same time as Schedule A members, whose residence on the Square "was not subject

to question, who though eligible to have received allotments were never allotted but who were generally considered as members of the Hoopa Valley Tribe and permitted to participate in Tribal Affairs and their descendants living on October 1, 1949." Fdg. 155.

Neither plaintiffs nor the Tribe have in their briefs discussed a standards based on Schedule B. The Government has from the plaintiffs' declaration questionnaires compiled a list of 90 plaintiffs who were alive on October 1, 1949, were not allottees or descendants of allottees, had been resident on the Reservation prior to October 1, 1949, and who had received Reservation benefits or services. These plaintiffs, the Government says, might meet a standard analogous to Schedule B, as defined in the resolution of November 6, 1959, if they

showed that they or an ancestor applied for an allotment, a matter not included in the questionnaires filled out by the plaintiffs and thus not now known.

The theory of the Government's formulation of a standard based on Hoopa Schedule B, as it might be applied to plaintiffs, is reasonable and is adopted, with the qualification that proof of an actual application for an allotment will not be required. It will be sufficient to prove eligibility for an allotment and failure to receive one, without fault. For instance, possession by the plaintiff or his ancestor of an assignment will be conclusive of such proof.

The standards based on Schedule B will thus comprehend persons living on October 1, 1949, and resident on the Reservation at that time, who can show that they had received Reservation

benefits or services and that they were eligible for an allotment and failed to receive one, without fault. An ancestor or the plaintiff himself may qualify under this standard and if it be an ancestor, the plaintiff living on October 1, 1949, is included, as were the descendants of "true Hoopas."

C. A Standard Based on
Hoopa Schedule C.

The Hoopas who became members under Schedule C were required to have 15 years residence on the Square before June 2, 1953, an ancestor born on the Square, and at least 1/4 Hoopa blood. Membership acquired under Schedule C did not carry with it automatic membership of children living on October 1, 1949, as in the case of the children of Schedule A and B

members living on October 1, 1949. The C children were themselves required, for membership, to have the Schedule C qualifications.

In the pursuance of the goal of equality with the Hoopa standards, that same standard will be adopted for the plaintiffs, with the elements of the Hoopas and the Square enlarged to refer to the plaintiffs and the Reservation. Qualification as an Indian of the Reservation will therefore be extended to a plaintiff who (1) was a resident on the Reservation for 15 years before June 2, 1953; (2) had an ancestor born on the Reservation; and (3) has 1/4 of the required blood, now to be discussed.

The Hoopa Valley Reservation is not a one-tribe reservation or even a reservation for specific tribes, but was by statute one of several set aside for

the Indians of California generally. This conclusion went far to establish, in the decision on the nature of the Hoopa Valley Reservation, that no tribe could have exclusive rights to the Reservation. 202 Ct. Cl. at 877-78, 974 (fdg. 175). But it did not follow that all California Indians had rights on the Reservation; the court held, further, that the Hoopa Valley Reservation was established by President Grant in 1876, as was well understood then and throughout the years following, "for such tribes as might reside or settle there, then or thereafter, with the approval of the President." 202 Ct. Cl. at 975 (fdg. 181), 877-78, 880-881, 974 (fdg. 175).

The blood, in sufficient degree, of any tribe so identified with the Reservation--that is, resident or settled there by the President--is therefore

acceptable as Reservation blood for purposes of qualification under the standard analogous to Schedule C, which required 1/4 Hoopa blood. The blood, for instance, of a tribe found only in far Southern California, whose members had not been resident or settled on the Reservation, is not acceptable.

What then shall be called the required blood? To begin, there is Hoopa blood, now, of course, to be enlarged to include at least Yurok blood. It is moreover conceded that Hoopa blood includes the blood of several tribes or bands who have merged into the Hoopas or are deemed "affiliated" with the Hoopas. The Council resolution of November 6, 1959, named, as this group, the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton and Tish-tang-atan Bands. Fdg. 155. This declaration, made before the present

controversy arose, disposes of any present objection to these tribes, by whatever name. Two groups, the South Fork and the Grouse Creek, are not mentioned in the resolution of November 6, 1959, but are presently agreed by both defendants to be Hoopas or the equivalent.

Of these tribes or bands, the Hunstang or Hunsatang are also known as the Hoonsotton or Hoonsolton, 202 Ct. Cl. at 880, Item 5, def. exh. 144, 559; the Redwood as the Chilula, fdgs. 22, 24, 179; the Miskut as the Miscotts or Miscofts, Item 5, def. exh. 144, 872; the Saiaz as the Saihs or the Nongatl, fdg. 28, Item 6, def. exh. 144, 410. Objections, by any of the name variants, to the Hoonsotton/Hoonsolton, Chilula/Redwood, Miscotts/Miskut/Miscofts and Saiaz/Siahs/Nongatl, made in a recently

filed Government brief, will not be heard.

Objected to by both defendants, and thus left for decision, are the Karok, Sinkyone/Sinkiene, Tolowa, Wintun, Wiyot and Wailake/Wylackie. As in the case of the tribes above, these names are not the only names by which the tribes are known. The Tolowa are also known as the Lagoon and Smith River Indians. Fdg. 7; Item 6, def. exh. 144, 773; Item 11, def. exh. 144, 515. Wiyot is another name for the Humboldt, 202 Ct. Cl. at 880; Item 6, def. exh. 144, 964; Item 7, def. exh. 144, 112-13; Item 10, def. exh. 144, 316. The Saiaz/Siahs/Nongatl, held above to be of Reservation blood, together with the Sinkyone/Sinkiene, Wiyot and Wailake/Wylackie, comprise the Eel River Indians. Item 6, def. exh. 144, 893; Item 7, def. exh. 144, 112-13. The Karoks are

Klamath Indians, or sometimes Upper Klamath Indians, and the Yuroks, too, are Klamaths, or Lower Klamaths. Fdgs. 4-6, 22, 38, 43, 45, 47. Yuroks and Karoks together compose the Klamaths, Fdg. 38, 43. Indeed, the words "Yurok" and "Karok" mean, respectively, "down-river" and "up-river," referring to a mid-point at the confluence of the Klamath and Trinity Rivers, at the center of the northern side of the Square. Fdg. 4.

The questions for decision are whether these tribes, so doubly and triply named, were among those residing on the Hoopa Reservation at the time of its creation or settled there by the President; if so, their blood is Reservation blood. The context for the decision is that California tribes were not formally organized, that their names were inexact and usually referred to a

place or area of residence, often the river on which their village was situated. Fdg. 4. The Hoopas themselves were also called the Trinity Indians, after the river on which they lived. Id. The anthropological evidence at the trial showed no signs of sharply bounded tribal areas from which Indians of other tribes would be excluded. Yurok villages were to be found, aboriginally, on the Trinity, in what was later called the Square. 202 Ct. Cl. at 880, 886-87 (fdg. 5), 899 (fdg. 22).

The word "tribes," used in referring to California Indians, means peoples. Geography, lack of tribal organization, mingling of residences of groups and intermarriage operated together to minimize any identifiable tribal affiliation. Fdgs. 44, 47. Tribal blood was difficult to verify, and tribal blood

as recorded by the Indians themselves was likely to be inaccurate. Fdgs. 37-48. In 1929 the Superintendent of the Reservation wrote that it was meaningless to divide the Indians of the Reservation into Hoopas, Klamath River Indians, Lower Klamath Indians and the other tribes of whom census rolls were prepared annually: "They have lost tribal affiliation to such an extent that very few of them know what tribe they belong to, and if they name a tribe, it is, in fact not a tribe but a band of Indians named after some local name of a place where they once resided." Fdg. 44.

With this understood, each of the challenged groups or bands will be treated:

Karoks. The first census, in 1886, showed Karoks present. Fdgs. 32, 37. Reservation censuses regularly listed

Karok Indians as living on the Reservation. Fdgs. 32, 37-38, 41-43, 45. Karoks appear in the census of 1900 as resident on the Reservation, though the title of the roll referred only to Hoopa and Lower Klamath River Indians. Fdg. 41. And the 1900 to 1907 censuses, though taken only of the Indians on the Square, entitled "Census of Hoopa Indians," annually listed Karoks. Fdg. 42.

In 1919, the Chief Clerk of the Indian Office stated that the Hoopa Valley Reservation "was intended to include both branches of the Klamath River Tribe," a reference to Yuroks and Karoks. On this basis, approval was given of an allotment of land on the Square to a Karok family. Fdg. 103. Later, in 1927, the Government again recognized the eligibility of a Karok Indian for an allotment, on condition that he move to the Reservation.

Fdg. 104. And in 1930, the Commissioner of Indian Affairs approved an exchange by a Yurok of his allotment on the Connecting Strip for an allotment on the Square. The premise of his opinion was that the Hoopa Valley Reservation was "intended to include both branches of the Klamath River Tribe," a reference to both Yuroks and Karoks. Fdg. 106.

The latest such recognition of Karoks as Indians of the Hoopa Valley Reservation is seen in the recent efforts of the Department of the Interior to create a Yurok Tribe. In a proposed rule outlining voter qualification standards, an alternative standard, analogous to the Hoopas' Schedule C, required 1/4 Indian blood, and defined Indian blood to include "Karok, Tolowa, Chilula, Wiyot and other groups of California Indians affiliated with the Hoopa Valley Reservation, as

extended." 44 Fed. Reg. 12210, 12211-13 (1979).

That many or most of the Karoks lived elsewhere than the Reservation does not make Karok blood foreign to the Reservation. It would be patently wrong to deny qualification, for lack of Reservation blood, to a Karok who otherwise met the requirements of Schedule C, merely because not all the Karoks were to be found on the reservation in the early days.

Nor can it be said that the difference between the Yuroks and the Karoks, in respect of the present issue, is that all the Yuroks were identified with the Reservation and that only some of the Karoks lived on the Reservation. An anthropological map introduced on the trial of the sample plaintiffs, pl. exh. 10, showed an area as the Yuroks place of residence many times larger than the

Addition, which is only a narrow strip extending three miles on each side of the Klamath, from the Trinity to the Ocean. The reservation was nonetheless created for Yuroks.

Karok blood will for these reasons be held to be Reservation blood.

Tolowa. In 1856 the Government moved 500 Tolowas from their territory on the Smith River, which was north of the Yurok territory, to the old Klamath River reservation, which later became the Addition to the Hoopa Valley Reservation. Fdgs. 7, 9. "By 1858, a large majority of these Tolowas returned to their former territory." Fdg. 7. Obviously then, some Tolowas stayed.

The Department of the Interior in its recent efforts to create a Yurok tribe apparently believed that the Tolowas were closely enough related to the Yorks and

the Reservation to include among the proposed electors the Tolowas as they did the Karok, among the "groups of California Indians affiliated with the Hoopa Valley Reservation as extended. 44 Fed. Reg. 12210, 12211-13 (1979).

The Tolowas will, on these facts, be held to be as much Indians of the Reservation as the Yuroks.

The Sinkyone, Wiyot and Wylackier.
The Wiyot, Wylackie and Sinkyone Indians were moved by the Government to the Hoopa Valley Reservation in 1869, before the formal creation of the Reservation by President Grant. They "apparently did not remain, at least not identifiably." 202 Ct. Cl. at 880; see fdgs. 28(a), 182. The uncertainty of their departure is suggested by the qualifier, "apparently."

By their other name, Humboldts, the Wiyots, at least, were to be found on the

Reservation in 1872. 202 Ct. Cl. at 880, 900 (fdg. 28b). After that, we do not know. They came from the Smith River Reservation, terminated by statute, and as plaintiffs point out, there was no reservation for them to return to.

As it is with the other small groups which have merged with the Hoopas, intermarriage and the prevailing loss of a sense of tribal affiliation is an at least equally likely explanation of their seeming disappearance, as is their departure. The Wiyots, too, were explicitly included in the Interior Department standards in the attempted creation of a Yurok tribe.

The enduring fact is that the three groups were moved to the Reservation. They thereby became tribes settled there, and their blood will be accepted as Reservation blood.

The Wintun. The Wintun are not mentioned in the findings. Plaintiffs rely on Kroeber, Handbook of California Indians (1925) to support their claim that Wintun blood is Reservation blood. Large excerpts from Kroeber were put into the record on the trial, but not the part presently relied upon. Kroeber, understood at the trial to be the acknowledged authority, recounts that (1) the Wintuns occupied most of the up-river, larger part of the Trinity River, while the Hoopas lived on the smaller, down-river stretch and (2) that the Wintuns occupied nearly the whole of the South Fork of the Trinity.

Kroeber's first statement suggests that there were no Wintuns on the Square. The second statement, however, indicates an affiliation with the Hoopas. The South Fork, whose banks they occupied in num-

bers, is also the name of a band conceded by the defendants to be the equivalent of the Hoopas and qualified as such.

The evidence in the record shows that the Hoopas occupied a small part of the northernmost portion of the South Fork, where they came into close contact with the Wintun. Item 7, def. exh. 144, 110, 129-130. The contact apparently led to some residence of Wintuns in Hoopa home territory. One Wintun, listed on the Reservation census in 1900 and 1920, is the ancestor of several of the present plaintiffs.

The evidence that Wintuns were among the Reservation Indians is not great but on balance there is enough to make doubtful any exclusion of Wintun blood from the generality of Reservation blood.

Finally, with respect to all of these contested groups--Karoks, Tolowa,

Sinkyone, Wiyot, Wylackie and Wintun--it should be remembered that blood is after all not the only requirement for qualification. If Karok or the blood of another of these groups alone is thought not decisive, because most of the others of the group lived elsewhere, it should be remembered that blood serves only preliminarily to screen out unsuitable persons, before the tests of ancestry and long residence are applied.

Reservation Blood--Recapitulation.

For the foregoing reasons the blood of the following tribes and bands is held to be Hoopa Valley Reservation blood and may be counted in determining the amount of Indian blood required by analogy to Hoopa Schedule C:

Yurok

Hoopa/Hupa

Grouse Creek

Hunstang/Hoonsotton/Hoonsolton

Miskut/Miscotts/Miscolts

Redwood/Chilula

Saiaz/Nongatl/Siahs

Sermalton

Sinkyone/Sinkiene

South Fork

Tish-tang-atan

Karok

Tolowa

Wailake/Wylackie

Wintun

Wiyot/Humboldt

D. A Standard for
After-Born Children.

By the membership standards of the
Hoopas, Indians born after October 1,
1949, could become members of the Tribe

only under Article IV, Section 1(b), of the Hoopa Constitution. From adoption to 1963, the Constitution made members of "[a]ll children born to members of the Hoopa Valley Tribe who are at least one-quarter degree Indian blood." From 1963 onward, the Constitution provided that the blood requirement could be satisfied only by the blood of the parent or parents through whom membership was claimed. In the interest of close similarity between the Hoopas' membership standards and the standards for qualification of the plaintiffs as Indians of the Reservation, the same standards will be applied to the plaintiffs.

Plaintiffs born after October 1, 1949 and before August 9, 1963 are held qualified who are the children of persons who are, or when alive would have been qualified under the standards adopted

herein, and who are 1/4 Indian blood. Those born from August 9, 1963 onward will be required to derive their "Indian blood" exclusively from parents who are or would have been qualified under the standards adopted herein. The Government's lists of plaintiffs submitted to date suggest that roughly 860 plaintiffs will qualify.

There can be no question that the "Indian blood" so required includes the blood of any Indian tribe. See the discussion in Part I of the rules for membership of after-born children. The blood of persons who became members of the Hoopa Valley Tribe under the provision for after-born children included that of the Tewa, Hopi, Seneca and Sioux. Since uniformity of treatment is the goal, the Hoopas' admission of after-born child members with Indian, non-Reservation blood confirms that the 1/4 blood required of

after-born children between 1949 and 1963 may be of any Indian blood, that is, the blood of any Indian tribe or group, Reservation or not.

E. Disqualification by
Dual Tribe Status

Both defendants urge that to prevent manifest injustice the dual status of a plaintiff should disqualify a plaintiff, notwithstanding satisfaction otherwise of qualifying standards. They cite in support (1) finding 208, which remanded the case of a sample plaintiff for consideration of the dual status issue; (2) federal regulations which prohibit distribution of assets by the Government to Indians with dual tribal status, e.g., 25 C.F.R. 101.4, and (3) the described

practices of other tribes with respect to dual tribe status.

Clear association with another Indian tribe or community, it is said, reflects an intentional relinquishment of Hoopa Valley Reservation rights, which should preclude recovery as an Indian of the Hoopa Valley Reservation; further, plaintiffs found to be so disqualified should not be allowed to elect qualification as an Indian of the Hoopa Valley Reservation.

The Tribe lists as indicia of dual status: tribal enrollment, distributions from tribal judgments, or receipt of allotments or other federal benefits or revenues. Membership in a terminated Indian tribe, the Tribe adds, should also operate as a disqualification by dual tribal status. The Government suggests that termination is a questionable basis

for automatic disqualification because many terminations have been invalidated by court decision, but that termination of a plaintiff, as part of another Indian group, whether valid or not, presents the issue of disqualification for dual tribal status:

These contentions are rejected, for several reasons. The Hoopa Constitution contains no provision on dual status. There is not Hoopa loss of membership by reason of status elsewhere. No member of the Hoopa Valley Tribe has ever been terminated--has lost his annual timber profits distribution--for tribal affiliation elsewhere. Some Hoopas have affiliated with other Tribes, and the plaintiffs cite defendants' admissions to show that "in a few" instances, the member has been required to relinquish his other affiliations. There was apparently no

pressure to oust the Hoopa from his tribe and his annual income.

The authority of the Council, granted in Sections 2 and 3 of Article IV, to make an enrollment "ordinance" and to make rules "for the termination of membership in the tribe" has apparently never been exercised. A draft ordinance on enrollment, containing a dual status restriction, and apparently dated as if it were planned for adoption in 1973, was in 1976 discovered by plaintiffs in the Tribe's files, and presented to the court as an attachment to a brief. The omission of the parties to mention it since can only be taken to mean that it was never adopted. Any requirement that plaintiffs relinquish rights elsewhere, as a condition to qualification here, is inconsistent with the nature of the present inquiry--which is an investigation

of rights to money, and not a bestowal of tribal membership.

The guiding principle here obtaining--that the standards of the Hoopas be the basis for the standards for qualification of the plaintiffs as Indians of the Reservation--forbids the disqualification of plaintiffs, otherwise qualified, on the ground of dual tribal status. This decision need have no effect on any tribe that may be organized by the Yuroks or by all the Indians of the Reservation--Hoopas and Yuroks and others. Any such tribes, created with or without sponsorship by the Executive or by Congress, may of course lawfully make rules for adoption of members, termination of membership and solution to the problems of dual tribal status. No prejudice to any such rules would be worked by the decision here. It cannot be too much

emphasized that this court is passing on a claim for money, not on tribal membership. The qualification of the successful plaintiffs, here, to receive per capita payments from the Reservation's income is effective only for sums which should have been paid in the past, and prospectively only until it is succeeded by another exercise of lawful authority.

CONCLUSION OF LAW

For the reasons set out in the foregoing, it is concluded that the plaintiffs of the following classes are qualified as Indian of the Hoopa Valley Reservation and are therefore entitled, equally with all others qualified, to shares of the profits of the unallotted trust lands of the Reservation. Judgment is given for these plaintiffs, against the

Government and the intervening defendant-Tribe, the payor and recipient of sums due the plaintiffs, of the sums payable, the amounts to be ascertained in further proceedings under rule 131(c):

1. Allottees of land on any part of the Reservation, living on October 1, 1949, and lineal descendants of allottees living on October 1, 1949.

This class is composed of plaintiffs on attachment A, which is to be part hereof and to be furnished by the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order.

2. Persons living on October 1, 1949, and resident on the Reservation at that time, who have received Reservation benefits or services, and hold an assignment, or can make other proof that though eligible to receive an allotment,

they have not been allotted, and the lineal descendants of such persons, living on October 1, 1949.

This class is composed of plaintiffs on attachment B, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order.

3. Persons living on June 2, 1953, who have at least 1/4 Reservation blood, as defined below, have forebears born on the Reservation and were resident on the Reservation for 15 years prior to June 2, 1953.

This class is composed of plaintiffs on attachment C, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order.

4. Plaintiffs of at least 1/4 Indian blood, born after October 1, 1949 and before August 9, 1963 to a parent who is or would have been, when alive, a qualified Indian of the Reservation under any of the foregoing paragraphs 1, 2 or 3, or has previously been held entitled to recover in this case.

This class is composed of plaintiffs on attachment D, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defendants jointly, within 30 days of this order.

5. Plaintiffs born on or after August 9, 1963, who are of at least 1/4 Indian blood, derived exclusively from their qualified parent or parents who is or would have been when alive a qualified Indian of the Reservation under any of the foregoing paragraphs 1, 2 or 3, or has

previously been held entitled to recover in this case.

This class is composed of plaintiffs on attachment E, which is to be a part hereof and to be furnished to the Clerk, to the extent practicable, by defenders jointly, within 30 days of this order.

6. Reservation blood, as used herein, shall mean that blood of the following tribes and bands: Yurok; Hoopa/Hupa; Grouse Creek; Hunstang/Hoonsotton/Hoonsolton; Miskut/Miscotts/Miscolts; Redwood/Chilula; Saiaz/Nongatl/Siahs; Sermalton; South Fork; Tish-tang-atan; Karok; Tolowa; Sinkyone/Sinkiene; Wailake/Wylacki; Wiyot/Humboldt; Wintun.

7. The motions for summary judgment of all plaintiffs not listed on attachments A, B, C, D and E are denied,

without prejudice to renewal within three months after this order becomes final, on a certification by counsel of record to the best of his belief, that the facts summarized in the motion, and to be determined on oral and written hearing, demonstrate either the qualification of the plaintiff under one of the standards adopted by the court or that the denial of qualification of the plaintiff would on the special facts of the case be manifestly unjust.

8. The furnishing by defendants of the above-mentioned attachments A, B, C, D, and E, shall be without prejudice to the rights of defendants to challenge this decision or any part thereof. Recently substituted and former counsel for defendant Hoopa Valley Tribe are expected to cooperate so that no time will be lost in the preparation of the lists to become

attachments A-E hereto. Defendants are to furnish the Clerk with the original and 12 copies of each of these attachments.

9. The plaintiffs' motions for summary judgment are denied and granted as provided above.

C-1

IN THE UNITED STATES COURT OF CLAIMS

No. 102-63

(Decided September 23, 1981)

JESSIE SHORT, et al.

v.

THE UNITED STATES, Defendant, and
HOOPA VALLEY TRIBE OF INDIANS, Defendant-
Intervenor

Harold C. Faulkner, attorney of
record, and William C. Wunsch, Weyman I.
Lundquist, and William K. Shearer, for
certain plaintiffs. Wallace A. Sheehan,
Faulkner, Sheehan & Wunsch, and Heller,
Ehrman, White & McAuliffe, of counsel.

Clifford L. Duke, Jr., attorney of record for certain plaintiffs. Bryan R. Gerstel and William K. Shearer, Duke, & Gerstel, of counsel.

Before Friedman, Chief Judge, Davis, Judge, Skelton, Senior Judge, Nichols, Kunzig, Bennett and Smith, Judges, en banc.

ON REQUEST FOR REVIEW OF TRIAL JUDGE'S
OPINIONS DENYING DEFENDANT'S MOTION TO
SUBSTITUTE AND DEFENDANT-INTERVENOR'S
MOTION TO DISMISS

FRIEDMAN, Chief Judge, delivered the opinion of the court:

In this suit, some 3,800 individuals who claim to be Indians of the Hoopa Valley Indian Reservation in Northern California (the Reservation) seek to recover their shares in the income from the sale of Reservation timber that the government distributed exclusively to another group of Indians of the Reservation. In Short v. United States, 202 Ct. Cl. 870, 486 F.2d 561 (1973), cert. denied, 416 U.S. 961 (1974) (the 1973 decision), we held the government liable to qualified Indians of the Reservation who were entitled to but did not receive shares in this income, and we rendered judgment in favor of 22 individual plaintiffs who had proved their entitlement. We also permitted the Hoopa Valley Tribe,

the group of Indians to whom the government theretofore had distributed the timber income exclusively, to intervene as a party defendant.

The case is now before us on requests for review by the United States and the Hoopa Valley Tribe (collectively, the defendants) of two decisions of Trial Judge Schwartz denying (i) the United States' motion to substitute for the plaintiffs as the real party in interest an entity called the Yurok Tribe, and (ii) the Hoopa Valley Tribe's motion to dismiss the suit on the ground that it involves nonjusticiable political questions. The government states that if its motion to substitute is denied, it then joins in the motion to dismiss. We agree with and affirm the trial judge's decisions.

I.

A. The facts relevant to the case's present posture, which we briefly review here, were the subject of extensive findings in our 1973 decision. See 202 Ct. Cl. at 885-987, passim.

The timber revenues at issue derive from unallotted, trust-status lands on a portion of the Reservation known as the Square. This is an area 12 miles square, which constituted the entire original Hoopa Valley Reservation when that reservation was established in 1864. Fdgs. 10-21, 202 Ct. Cl. at 888-99. An area contiguous to the Square, inhabited then as now primarily by Yurok Indians and known as the Addition, was added to the Reservation in 1891. Fdgs. 33-34, 202 Ct. Cl. at 902-03.

In 1950, the Indians of the Square established an organization known as the Hoopa Valley Tribe (fdg. 145, 202 Ct. Cl. at 962), whose membership excludes the plaintiffs. Fdg. 143, 202 Ct. Cl. at 961. Beginning in 1955, the Secretary of the Interior, pursuant to requests by the Hoopa Valley Tribe's Business Council, distributed the revenues from the timber sales annually in per capita payments to the Indians on the official roll of the Hoopa Valley Tribe, to the exclusion of the Indians of the Addition. Fdgs. 171, 173, 202 Ct. Cl. at 971-72, 973. The Secretary took this action on the basis of an opinion of the Solicitor of the Department, 65 Dec. Dep't Int. 59 (1958), reprinted in 2 U.S. Department of the Interior, Opinions of Solicitor of the Department of the Interior Relating to Indian Affairs, 1917-1974, at 1814, that

the Square and the Addition were separate reservations. Fdg. 174, 202 Ct. Cl. at 973. Between 1955 and February 1969, these payments totaled approximately \$12,650,000. Fdg. 172, 202 Ct. Cl. at 972.

In 1963, the plaintiffs, each of whom claims to be an Indian of the Addition area of the Reservation, brought this suit against the United States, as trustee and administrator of the timber resources of the Reservation, seeking their shares of the revenues the government had distributed to individual Indians of the Reservation. Following a trial and after briefing and oral argument, we held in 1973 that the Secretary's treatment of the Square and the Addition as separate reservations in which the Indians of each had exclusive rights to the resources of their area was erroneous. 202 Ct. Cl. at

884-85, 486 F.2d at 567-68. Adopting the trial judge's opinion and detailed findings (202 Ct. Cl. at 872-73, 486 F.2d at 561), we held that the Square and the Addition together constituted a single reservation, that all the Indians of that Reservation were entitled to share in all of its revenues that were distributed to individual Indians (including the timber revenues from the Square), and that the plaintiffs who were Indians of the Reservation were entitled to recover the monies the government withheld from them. Fdgs. 188-89, 202 Ct. Cl. at 980-81.

We also ruled that 22 of 26 named individual plaintiffs, whose cases had been chosen as representative of the plaintiff group, see 202 Ct. Cl. at 874, 486 F.2d at 562, had established that they were Indians of the Reservation. 202 Ct. Cl. at 885, 486 F.2d at 568; fdgs.

191-217, 202 Ct. Cl. at 982-87. We held that these 22 plaintiffs "are entitled to recover, as Indians of the Hoopa Valley Reservation, an aliquot share in the revenues of the unallotted trust-status lands of the entire reservation . . . , the amount of recovery to be determined following trial of the claims of the remaining plaintiffs." Fdg. 217, 202 Ct. Cl. at 987. We remanded the case for a retrial of the claims of the four remaining representative plaintiffs and a determination of the rights of the remaining plaintiffs to recover. 202 Ct. Cl. at 873, 885, 987-88, 486 F.2d at 561, 568.

The Supreme Court denied petitions for certiorari filed by the Hoopa Valley Tribe and the United States. 416 U.S. 961 (1974).

B. Since our 1973 decision, the parties and this court have taken a number

of steps looking toward the determination and identification of the Indians of the Reservation who are entitled to recover.

In 1976, we permitted 515 additional persons to intervene as plaintiffs as of the time the suit was instituted, thus increasing the number of plaintiffs to approximately 3,800. We also closed the class. Short v. United States, 209 Ct. Cl. 777 (1976).

Each plaintiff then filled out a life-history questionnaire developed and agreed upon by the parties. See Hoopa Valley Tribe v. United States, 219 Ct. Cl. 492, _____, 596 F.2d 435, 439 (1979). Between September 1976 and May 1977, at the behest of the trial judge, the parties filed successive cross-motions for summary judgment for and against some 3,200 plaintiffs. We referred these motions to the trial judge for recommended decision.

Short v. United States, 212 Ct. Cl. 522 (1976). With the consent of the defendants, we granted summary judgment for 121 additional plaintiffs whose status as Indians of the Reservation the defendants did not contest. Short v. United States, No. 102-63 (orders entered December 3, 1976, February 25, 1977, and April 27, 1978).

The trial judge has not issued any recommended decisions on the remaining cross-motions for summary judgment because of (i) protracted but unsuccessful efforts to settle the case and (ii) the filing of the motions before us.

II.

The Motion to Substitute

A. After efforts to settle this

case failed, the trial judge in September 1978 reconvened proceedings on the pending summary judgment motions. Shortly before a scheduled status conference to determine the course of proceedings, the government began efforts to organize a Yurok Tribe.

In November 1978, 15 days before the status conference, the Assistant Secretary for Indian Affairs of the Department of the Interior issued a letter to the plaintiffs in this case and to all members of the Hoopa Valley Tribe announcing a plan to organize a Yurok Tribe as the "first step" for "resolv[ing] the impediments to self-determination" on the Reservation.

The Assistant Secretary stated that he intended to conform to this court's 1973 decision by "designat[ing] the Hoopa Valley Tribe and the Yurok Tribe as the Indians of the Reservation who are

entitled to use and benefit from the Reservation and its resources." Since no Yurok tribal organization existed and the membership of the Tribe was not established, the Assistant Secretary announced that the Interior Department would initiate organization of a Yurok Tribe.

In December 1978 and March 1979, the Interior Department proposed a set of qualifications for developing a list of persons entitled to vote in the election of an "Interim Yurok Governing Committee" that would draw up a tribal constitution for submission to the voters. 44 Fed. Reg. 12,210 (1979); 43 Fed. Reg. 60,670 (1978). In May 1979, the Department proposed rules for the conduct of this election. 44 Fed. Reg. 31,156 (1979). These proposals engendered considerable opposition by the potential voters. In

written comments and at government-sponsored public meetings held on or near the Reservation, they objected to organizing a tribe at all before conclusion of this lawsuit. In spite of these objections, in April and August 1979, the Interior Department published final regulations establishing qualifications for voters, 44 Fed. Reg. 24,536 (1979), and procedures for conducting the election. 44 Fed. Reg. 46,269 (1979). See 25 C.F.R. Parts 55, 55a (1980). The Interior Department then circulated nominating petitions and mailed out ballots.

Some of the plaintiffs in this action brought suit against the Secretary of the Interior to enjoin the election. The case was dismissed without prejudice upon the government's agreement not to conduct any election of a temporary or permanent

governing body, a constitution drafting committee, or any other body purporting to be representative of the voters, "without first conducting a referendum in accordance with law in which the voters approve of such an election taking place." Beaver v. Secretary of the Interior, Civ. No. 79-2925 (N.D. Cal., Feb. 11, 1980).

In the ensuing referendum in which the Indians were asked to state whether they favored "establishment of an Interim Yurok Governing Committee," 1,909 voted against it and 65 in favor. All the plaintiffs were eligible to vote in that referendum. See 45 Fed. Reg. 49,224 (1980) (to be codified in 25 C.F.R. Part 55b).

B. In May 1979, while the government's efforts to organize a Yurok Tribe were pending, the United States filed a motion to substitute the Yurok Tribe for

the 3,800 individual plaintiffs. The theory of this motion is that the Reservation and its resources are tribal property rather than the common property of the individual Indians and that only a tribe composed of non-Hoopa Indians and not any individual Indian has a right to recover the proceeds of the timber sales. The defendant recognizes that there is no existing organizational or functional tribal entity. It urges, however, that the Yurok Tribe has existed for many years as a conceptual entity and suggests that if the motion to substitute is granted, the individual Yurok Indians soon will create an appropriate tribal organization.

The trial judge denied the motion primarily on the ground that all of the issues it raises have been rejected repeatedly during this litigation--and particularly in our 1973 decision.

C. The government argues that substitution of the Yurok Tribe for the individual plaintiffs would not be inconsistent with our 1973 decision because that decision did not determine that any individual Indian could recover, but only that the Square and the Addition are parts of a single reservation, the resources of which the government must use for the common benefit of the Indians of the tribes settled there.

To the contrary, our 1973 decision firmly and unequivocally held that individual Indians are entitled to recover. We explicitly stated that "[s]uch of the plaintiffs as are found herein to be Indians of the reservation will become entitled to share in the income from the entire reservation including the Square" Fdg. 189, 202 Ct. Cl. at 981. We granted summary judgment for the

22 plaintiffs whom trial had shown to be Indians of the Reservation, ruling that they "are entitled to recover in amounts to be determined under Rule 131(c). . . ." 202 Ct. Cl. at 873, 486 F.2d at 561; see 202 Ct. Cl. at 885, 486 F.2d at 568; fdg. 217, 202 Ct. Cl. at 987. We reaffirmed that holding when we subsequently granted summary judgment for the 121 additional plaintiffs whose status as Indians of the Reservation the government did not challenge. See supra, pp. 4-5.

D. Our 1973 decision that the individual Indians are entitled to recover is the law of the case. As we explained in United States v. Turtle Mountain Band of Chippewa Indians, 222 Ct. Cl. _____, 612 F.2d 517 (1979), quoted with approval in Northern Helex Co. v. United States, 225 Ct. Cl. _____, _____, 634 F.2d 557, 561 (1980), under that doctrine "as a

matter of sound judicial practice, a court generally adheres to a decision in a prior appeal in the same case unless one of three 'exceptional circumstances' exists: 'the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and works a manifest injustice.'" 222 Ct. Cl. at _____, 612 F.2d at 521. The government argues that we should not follow our 1973 decision because it comes within the last exception.

As we pointed out in Northern Helex, supra, 225 Ct. Cl. at _____, 634 F.2d at 562, however:

The standard under this exception is a stringent one. As we stated in Turtle Mountain Band: "The purpose of the law-of-the-case principle is to provide finality to judicial decisions. A strong showing of clear error therefore is required before a

court should reexamine its decision in the prior appeal." 222 Ct. Cl. at _____, 612 F.2d at 521. A mere suspicion of error, no matter how well supported, does not warrant reopening an already decided point. See id. Only if we were convinced to a certainty that our prior decision was incorrect would we be warranted in now reexamining [it].

The government has not made a "strong showing of clear error" in our 1973 decision or "convinced [us] to a certainty" that it was wrong. We therefore decline to reconsider it. Indeed, to the extent that we have reexamined the 1973 decision in reaching this conclusion, we are satisfied that that decision was correct.

In our 1973 decision, we found that the effect of the 1891 Executive Order combining the Square and the Addition "was to create an enlarged reservation in which the Indians of the original reservation and the Indians of the added tracts would

have equal rights in common" (fdg. 183, 202 Ct. Cl. at 976), and that "the effect of the executive order of 1891 was that all the Indians of the reservation as thereby extended--Addition and Square--got equal rights in the enlarged reservation" Fdg. 188, 202 Ct. Cl. at 980. Our ultimate finding was that the government "acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe, whose rules exclude from membership most of the Indians of the Addition, as the persons entitled to the income from the unallotted trust-status lands on the Square." Fdg. 189, 202 Ct. Cl. at 980-81. It follows from that conclusion that individuals whom the Secretary arbitrarily excluded from per capita distributions have the right to recover.

Thus, as the trial judge pointed out in his opinion on the political question issue, "this is a case in which claimants are seeking the vindication of individual Indian rights" (slip op. at 17), not of tribal rights. Indeed, despite the existence of the Hoopa Valley tribal organization, the Secretary "disbursed" from the timber receipts "per capita payments to the Indians on the official roll of the Hoopa Valley Tribe" Fdg. 171, 202 Ct. Cl. at 971. The Secretary thus recognized that payment of the timber revenues on an individual (rather than a tribal) basis was an appropriate method of distribution, and was not in conflict with any concept of tribal ownership of trust-status lands.

Unlike the Hoopa Valley Indians, who had a tribal organization, there was no functioning entity that could have acted

for the non-Hoopa Indians of the Reservation either when non-Hoopa Indians filed this suit in 1963, or when we ruled in 1973 that all the Reservation Indians had an interest in all the Reservation property. It was therefore not only appropriate, but necessary, that the present suit be brought by individual Indians.

In sum, the government has not demonstrated any error, let alone clear error, in our 1973 decision that the individual non-Hoopa Valley Indians of the Reservation are entitled to share in the revenues derived from the sale of timber on the Square.

E. The government also urges that substituting the Yurok Tribe for the individual plaintiffs would facilitate the disposition of this case. Assuming, arguendo, that this is a valid reason for

departing from the law of the case (a highly dubious assumption), the argument is unconvincing.

The government asserts that the substituted Yurok Tribe could continue to prosecute this suit to a quick conclusion and that the money judgment in favor of the Tribe would be distributed, pursuant to the Indian Judgment Funds Distribution Act, 25 U.S.C. §§ 1401, et seq., according to a plan to be formulated by the Secretary of the Interior and supervised by Congress. The government recognizes, however, that there is no functioning Yurok tribal organization. As noted, the Yuroks overwhelmingly rejected the government's attempt to organize a tribe. See supra, p. 6. The problems that substitution of such a nonfunctioning entity for the present plaintiffs would create suggest that the more probable effect of

the government's proposal would be to delay further rather than to expedite the ultimate disposition of this case.

How would a Yurok Tribe without any functional organization and without tribal leadership conduct the litigation? Who would represent it? Would the tribe retain the lawyers who represent the plaintiffs? Perhaps, but perhaps not. The chaotic situation that the government's proposal would be likely to produce is reminiscent of the government's uncertainty that prompted it earlier in this litigation to insist that all the individual claimants be identified and made parties rather than permitting the suit to proceed in a representative capacity. See pretrial conference memorandum of May 31, 1966. Since there is no way of knowing whether the plaintiffs would accept the government's suggested form of tribal

organization, what other form that organization might take, or how long such organization might require, substitution hardly seems a promising method of expediting this litigation.

Moreover, the substitution of the Yurok Tribe as the plaintiff would not avoid the need for this court to ascertain who were the Indians of the Addition when the timber proceeds were distributed. Accomplishing the latter objective would require us to overrule a further portion of our 1973 decision and a 1979 decision.

In 1973, we held that each of the Indians of the Reservation was "entitled to share . . . equally with all other such Indians" in the proceeds of the timber sales distributed to individual Indians. Fdg. 189, 202 Ct. Cl. at 981. Several years later, the Hoopa Valley Tribe sought to prevent the government from

sequestering 70 percent of the annual timber income pending the final decision in this case, contending that the Indians of the Reservation were entitled to timber revenues "based on [the] respective [population] share of each group in 1891" which was "approximately equal."

We held that the Hoopa Valley Tribe was barred by res judicata "from seeking to raise the issues of the ratio of division of revenues between Hoopas and Yuroks" Hoopa Valley Tribe v. United States, 219 Ct. Cl. 492, _____, 596 F.2d 435, 447 (1979). We stated that our 1973 decision held that "all the revenues were to be divided by the number of Indians of the Reservation and that the resulting shares were to be those of the individual Indians, respectively." Id. at _____, 596 F.2d at 447.

The defendants have not demonstrated that those rulings were erroneous, and we decline to reconsider or change them. The Hoopa Valley Tribe's present contention that the timber sale revenues should be divided 50-50 between the Hoopa Valley and the Yurok Tribes as tenants-in-common does not warrant a change in our previous decisions that those revenues are to be divided per capita among all the Indians of the Reservation.

III.

The Motion to Dismiss

The Hoopa Valley Tribe has moved to dismiss all the individual claims on the ground that they involve nonjusticiable "political" questions. The United States joins in the motion if, as we have done,

we reject its motion to substitute. The defendants contend that, under Baker v. Carr, 369 U.S. 186, 217 (1962), there are no "judicially discoverable and manageable standards" -- one of the indicia of a political question -- for us to apply in determining who are Indians of the Reservation. Therefore, the argument runs, it is for Congress and the Executive branch, but not for the courts, to make that determination.

In denying the motion, the trial judge correctly pointed out that its substance, although not in its precise present form, had been urged upon us several times in this case, that we have rejected the contention repeatedly, and that the defendants have given no convincing reasons why we should now reach a different conclusion. The trial judge also correctly noted that if the motion

raises a new issue, the defendants have not given an adequate explanation for their 17-year delay in filing it. Finally, the trial judge discussed at considerable length the merits of the contention and found them unpersuasive. Although we agree with the trial judge's opinion, we find it necessary to discuss only his first ground of decision, since, in our view, that is dispositive.

As the trial judge pointed out, this is not a new contention. In a motion to dismiss filed in 1963, the government argued that the task of identifying the individuals entitled to share in the timber income was "subject to the plenary power of Congress and . . . not a judicial matter." We denied the motion to dismiss the entire case, but granted it with respect to two of the plaintiffs' claims, which are irrelevant to the case in its

present status. Short v. United States, No. 102-63 (order entered April 24, 1964).

In a joint brief submitted in the 1973 case, the defendants asserted that "the power to determine membership in a tribal entity for the purpose of resolving entitlement to tribal property resides squarely with Congress, or with the tribe, subject to the approval of the Secretary of the Interior." In their exceptions to the trial judge's recommended findings there that 22 specific individual plaintiffs had proved that they were Indians of the Reservation, the defendants stated that, in his recommended decision, the trial judge had "been unable to propose reasonable standards" for determining which of the plaintiffs were entitled to judgments, and urged that "such complex determinations are reserved for administrative officials, such as the Secretary

of the Interior" This contention is virtually identical to the one the defendants now make. In holding that the 22 plaintiffs were entitled to recover, our 1973 decision necessarily rejected that contention.

The Hoopa Valley Tribe asserts that those earlier arguments were directed only to the question of jurisdiction over the subject matter of this suit, but not to its nonjusticiability. The government's petition for certiorari seeking review of our 1973 decision, however, recognized that that decision rejected the assertion that the case was nonjusticiable. Citing Baker v. Carr, supra, the leading decision on the political question doctrine, the petition contended that our 1973 decision "unduly interferes with the authority of the political branches of the government to recognize tribal membership and tribal

jurisdiction," which are "question[s] of judgment for the political branches to decide"

Although there are significant doctrinal differences between jurisdiction and justiciability, the arguments the defendants now make in support of dismissal for nonjusticiability are the same ones they previously made in support of dismissal for lack of jurisdiction. Both arguments essentially are that this case requires the decision of questions within the exclusive province of the political branches of the government. Our prior decisions rejecting those contentions are the law of the case. Here, as in the motion to substitute, the defendants have not shown that our prior decisions were clearly erroneous or, indeed, erroneous at all. To the extent that the defendants argue that the problems that have devel-

oped in formulating guidelines for determining who are Indians of the Reservation demonstrate the error of those prior decisions, our discussion in part IV of this opinion (infra, pp. 13-16) of the appropriate guidelines shows that there are "judicially discoverable and manageable standards" for deciding this case.

IV.

The Further Proceedings in This Case

This suit was begun in 1963 and, except for cases transferred to us from the Indian Claims Commission, it is the oldest case on our docket. The trial judge has been struggling valiantly, vigorously, and conscientiously for more than seven years to formulate standards for determining who are Indians of the

Reservation. Substantial progress has been made, including the filing of detailed personal questionnaires and of voluminous motions for summary judgment with respect to most of the plaintiffs. Unfortunately, the proceedings have been seriously delayed for a number of reasons, over which the trial judge had no control, including the present motions, which have been pending for more than two years.

In his opinion dealing with the political question issue, the trial judge stated that the issue of the standard for identifying Indians of the Reservation is "both difficult and novel" (slip op. at 18), and that "[a]mong the pending matters" on the motions for summary judgment is the question of utilizing "such sources of assistance to the court as the employment of a court-appointed expert and invitations to appropriate organizations

to appear as amici curiae on the issue of the appropriate qualifications for an Indian of the reservation." (Slip op. at 19). Those procedures would further delay the case and we see no need to utilize them.

Under our order referring the motions for summary judgment to the trial judge, he ordinarily would initially formulate the standard for determining the Indians of the Reservation. We have determined, however, that in order to expedite this case, we should now ourselves undertake the task. In doing so, fortunately we need not write upon a clean slate.

The timber revenues that the Secretary distributed to individual Hoopa Indians beginning in 1955 were paid to those persons whom the Hoopa Business Council had determined to be members of the Tribe. In our 1973 decision, we found

that the Hoopa Business Council in 1948 undertook to compile "a current roll of the Indians of . . . the Square, for the purpose of controlling the revenues from the resources of the reservation as so defined." Fdg. 136, 202 Ct. Cl. at 959. In determining the membership of the Hoopa Tribe (to whom the Secretary made the payments), the Hoopa Business Council used a detailed and carefully drawn set of standards. We described and explained those standards in the findings in our 1973 decisions. Fdgs. 137-45, 148, 152(c), 155-56, 202 Ct. Cl. at 959-67. The Secretary approved both the Hoopa constitution (which specified the standards for membership in the Hoopa Valley Tribe, fdg. 145, 202 Ct. Cl. at 962) and two schedules which listed most of the Indians who had been determined to be

members of the Tribe. Fdg. 153, 202 Ct. Cl. at 964.

Although the situation of the Hoopas and the plaintiff Yuroks may not be precisely the same, we conclude that the standards used to determine the membership of the Hoopa Valley Tribe also provide an appropriate basis for determining which of the plaintiffs are Indians of the Reservation. The timber revenue payments were made to those Hoopas who, on the basis of those standards, had been determined to be Indians of the Reservation as the Secretary then viewed that area, i.e., solely the Square. We held in 1973 that "Indians of the Reservation" were not limited to those of the Square, but also included those of the Addition. The bases that originally were used to determine the Indians of that portion of the Reservation, and which the Secretary of the

Interior used in his decision on how to distribute the timber profits for the benefit of the Indians of the Reservation, are no less appropriate to determine the additional persons whom we have held are also Indians of the Reservation.

Indeed, the Interior Department recognized this fact when it attempted to organize a Yurok Tribe. In his message to the Hoopas and Yuroks proposing the organization plan (see supra, p. 5), the Assistant Secretary for Indian Affairs stated that the Yurok's "membership standards and criteria" should "[t]o the extent possible . . . be constructed along lines similar to those used during the construction of the membership of the Hoopa Valley Tribe" See 44 Fed. Reg. 12,210 (1979). The Assistant Secretary suggested not only that the Yurok membership roll would be developed accord-

ing to procedures similar to those used by the Hoopa Valley Tribe, but that similar membership standards would result. He anticipated, for example, "that members of both Tribes will include some Indian people who are not necessarily of Hoopa or Yurok blood."

In any case such as this, where it is necessary to formulate standards for determining the membership of a large class, probaby it is impossible to achieve workable and manageable criteria that can be easily applied and that also will produce the correct result in every situation. There is need for some flexibility, so that recognition can be given to the small number of cases in which the standards cannot be strictly applied or in which their strict application would produce manifest injustice. Moreover, there may be differences between

the situations of the Hoopas and the Yuroks that necessitate some differences in the standards governing the membership of the two Tribes.

The Hoopa Tribe standards, however, provide an appropriate guideline and basis for determining which of the plaintiffs are entitled to share in the timber payments because they are Indians of the Reservation. Those are the standards the trial judge basically should apply in deciding the question. We leave it to the trial judge's sound discretion to determine what, if any, changes should be made in the Hoopa standards and in the application of the governing standards in individual cases. We have every confidence that the trial judge, with his long experience and complete familiarity with this case, will be able to formulate and

apply those standards to produce a just and fair result.

The task the trial judge must perform upon the remand we are ordering will be difficult and time-consuming. We believe, however, that within six months he should be able to render a recommended decision that in a single document will announce the governing standards and apply them to those of the plaintiffs' cases that are ripe for decision. We take comfort from the statements by the plaintiffs' counsel at oral argument that the Hoopa standards would be appropriate to apply in this case and that their use would permit a prompt completion of this litigation.

CONCLUSION

The decisions of the trial judge denying the motions of the defendant to

substitute the Yurok Tribe for the individual plaintiffs and of the defendant-intervenor to dismiss the suit are affirmed, and those motions are denied. The case is remanded to the trial judge to issue by April 1, 1983, a recommended decision determining, under standards he will formulate in accordance with this opinion, which of the plaintiffs whose cases are ready for disposition are Indians of the Reservation.

IN THE UNITED STATES

COURT OF CLAIMS

No. 102-63

(Decided October 17, 1973)

JESSIE SHORT, ET AL. v. THE UNITED STATES

Harold C. Faulkner, attorney of record, and William C. Wunsch, for plaintiff. Wallace Sheehan and Faulkner, McComish & Wunsch, of counsel.

Herbert Pittle, with whom was Assistant Attorney General Harlington Wood, Jr., for defendant.

Jerry C. Straus, for Hoopa Valley Tribe, amicus curiae. Wilkinson, Cragun & Barker, Angelo A. Iadarola, Richard A. Baenen and Alan I. Rubinstein, of counsel.

Before Cowen, Chief Judge, Laramore, Senior Judge, Davis, Skelton, Nichols, Kunzig and Bennett, Judges.

OPINION

Per Curiam: This case comes before the court on defendant's exceptions to a recommended decision filed May 22, 1972, by Trial Judge David Schwartz pursuant to Rule 134(h). The court has considered the case on the briefs and oral arguments of counsel for the parties and the amicus curiae. The court agrees with the decision as hereinafter set forth, rejects the objections and exceptions of defendant and amicus, and hereby affirms and adopts the decision as the basis for its judgment in this case. Insofar as defendant and amicus curiae have presented arguments to the court which differ from those presented to the trial judge, the court has considered them but does not deem any change in the trial judge's opinion or findings is called for. The

court has, however, excised from the findings the trial judge's notes which he indicates were not intended as findings.

Subsequent to the trial judge's decision and the oral argument before the court, the Supreme Court decided Mattz v. Arnett, 412 U.S. ____ (June 11, 1973). We consider the trial judge's opinion and findings, and our decision herein, to be fully consistent with the opinion and decision in that case. Although the ultimate issues in the two cases are different, several aspects of the Supreme Court's opinion tend substantially toward supporting our holding in the present case.

It is concluded, therefore, that certain of the plaintiffs are entitled to recover in amounts to be determined under Rule 131(c), and the claims of the others

are set down for retrial, as provided in findings 217-218. The case is remanded to the trial judge for further proceedings. The motion of the Hoopa Valley Tribe to intervene is granted.

OPINION OF TRIAL JUDGE

Schwartz, Trial Judge: In 1876 a 12-mile square tract of land in Northern California, on the last reach of the Trinity River before it joins the Klamath River, was set aside by order of President Grant as the Hoopa Valley Indian Reservation. Most but not all of the Indians of the tract, called the Square, were and have been Hoopa Indians. In 1891 President Harrison made an order extending the boundaries of the reservation to include an adjoining 1-mile wide strip of land on

each side of the Klamath River, from the confluence of the two rivers to the ocean about 45 miles away (in consequences of which the reservation took on the shape of a square skillet with an extraordinarily long handle). Most of the Indians of the added tract, called the Addition, were and have been Yurok Indians, also known as Klamaths.

The Square is heavily timbered and in the last 20 years the timber units unallotted trust-status lands has begun to produce revenues of about \$1 million annually. These revenues, administered by the United States as trustee for the Indian beneficial owners, have been divided by the Secretary of the Interior exclusively among the persons on the official roll of the Hoopa Valley Tribe, an organization created in 1950, whose membership rules limit enrollment to

allottees of land on the Square, non-landholding "true" Hoopas voted upon by the Tribe, and long-time residents of the Square of a prescribed degree of Hoopa blood, descended from natives of the Square.

The plaintiffs are 3,323 Indians, in the main Yuroks of the Addition and their descendants, who are ineligible for membership in the Hoopa Valley Tribe and have thus been denied a share in the revenues from the Square. They bring this suit against the United States as their trustee for a money judgment for their alleged share in the timber income, claiming it as all-reservation property. The Hoopa Valley Tribe, in a sense the real party defendant, is present in the case as an amicus curiae aligned with the defendant; the position of the Government and the Tribe are identical and the two

have filed joint briefs. (References to defendant or to the Government will therefore mean the Hoopa Valley Tribe as well.)

To simplify the litigation, the cases of 26 plaintiffs believed to be representative of the 3,323 were chosen for trial with the expectation that if the plaintiffs as a group were upheld on the common issue, resolution of the sample cases would develop standards by which the parties could dispose of many or most of the remaining cases. The first order of business is therefore the basic issue of whether the Indians of the Addition may be excluded from sharing in the revenues of the communal lands of the Square.

The history of the reservation may be succinctly stated: It was established in 1864 pursuant to the Act of April 8, 1864, 13 Stat. 39, its boundaries were in 1865

provisionally determined to be what has since been called the Square, formally so defined by an order of President Grant in 1876 and extended to include the Addition by order of President Harrison in 1891. The act of 1864 is the basis of the claims of all parties. No claim is made of any title or right antedating or overriding the statute or the authority exercised thereunder.

The plaintiffs contend that as Indians of the Addition, they are entitled to share in the resources of the entire reservation, including the Square. The enlargement of the reservation in 1891 formed, they maintain, a single, integrated reservation to which all the Indians on both the Square and the Addition got equal rights in common. The contrary position of the Government is that the Square survived the enlargement of the

reservation in 1891 as an entity whose resident Indians had vested substantive rights, exclusive as against the Indians of the Addition. The executive order of 1891, the Government says, joined the Square and the Addition for administrative purposes only, not for purposes of substantive rights, and without effect on already vested rights of the Indians of the Square, now organized as the Hoopa Valley Tribe. The controversy is decided here in favor of plaintiffs, for the reasons which follow.

On August 21, 1864, Austin Wiley, the federal Superintendent of Indian Affairs for California, in a public notice "located" a reservation, to be called the "Hoopa Valley Reservation", "situated" on the Trinity River in Klamath County.¹ A second notice in February of the following year defined the boundaries of the "Hoopa

Reservation" as a square tract bisected by the last 12 miles of the Trinity River before its junction with the Klamath and extending 6 miles on each side of the Trinity.² Eleven years later, on June 23, 1876, President Grant in an executive order precisely defined the "exterior boundaries" of the "Hoopa Valley Indian Reservations" in accordance with a survey, and declared that the 89672.43 acres embraced therein were "set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in California, by act of Congress approved April 8, 1864."³ The circumstances surrounding the establishment and enlargement of the reservation are described in the accompanying findings of fact.

Neither the public notices of 1864 and 1865 nor the executive order of 1876 mentioned any Indian tribe by name, nor

intimated which tribes were occupying or were to occupy the reservation. In this they were consistent with the statute whose authority was being exercised, the Act of April 8, 1864, 13 Stat. 39. That act, cited by both public notices and by the executive order, authorized the President in his discretion to locate not more than four Indian reservations in California, at least one of them to be in the northern district of state, of such extent as he deemed suitable for the accommodation of the Indians of the state, all without mention of any tribe by name.

Section 2 of the act reads as follows
(13 Stat. 40):

Sec. 2. That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of

said state, and shall be located s remote from white settlements as may be found practicable, having due regard to their adaptation to the purposes for which they are intended: Provided, That at least one of said tracts shall be located in what has heretofore been known as the northern district:
 * * * And provided, further, That said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said state, and that in case any such reservation is so included, the same may be enlarged to such an extent as in the opinion of the President may be necessary, in order to its complete adaptation to the purposes for which it is intended.

The powers conferred by this statute are to be construed in keeping with the broad connotations of the words employed: "at his own discretion" "suitable extent," "accommodation of the Indians," "practicable" and "due regard." South Puerto Rico Company Trading Corp. v.

United States, 167 Ct. C. 236, 260-261; 334 F.2d 622, 641-32 (1964), cert. denied, 379 U.S. 964 (1965). It is not disputed that the President had complete discretion as to which tribes were to be located on any of the reservations. The number of the tribes to occupy a reservation was also a matter for Presidential decision. There were many Indian tribes in California; in the north, in the area of the Hoopas and the Yuroks, almost every river and creek had its own tribe. Since there were to be no more than four reservations in the state--less, if the President so decided--it was inevitable that each reservation could and almost certainly would be occupied by more than one tribe. How many tribes was left to the President; the President would in his discretion adjust the size of a

reservation to the number of tribe and Indians to be accommodated.

Given such a statutory scheme, faithfully reflected by the omission of reference to any Indian tribe in the notices of 1864-65 and the executive order of 1876, the Hoopa Indians could get no vested or preferential rights to the Square from the fact alone of being the first or among the first to occupy the Square with Presidential authority. The sequence in which tribes were authorized to occupy a reservation gave no rights. Any exercise of the President's discretion in favor of the Hoopas, in approving their residence on the reservation, gave the Hoopas no vested rights as against such other tribe as might be the beneficiary of a simultaneous or subsequent exercise of the President's discretion. Hynes v. Grimes Packing Co., 337 U.S. 86, 103

(1949); Healing v. Jones, 210 F.Supp. 125, 138, 153, 170 (D. Ariz. 1962), aff'd 373 U.S. 758 (1963); Crow Nation v. United States, 81 Ct. Cl. 238, 278 (1935).

It is claimed by defendant, however, that the Hoopas were the sole aboriginal occupants of the Square. The legal consequences were this claim upheld, as against the statute and the President's authority, need not be gone into, for the claim of fact is unfounded. The accompanying findings recount that the Hoopas shared the Square with at least some Yuroks, whose native villages ranged along the Klamath River from the ocean to the Trinity--the area later to become the Addition--to the banks of the Trinity near the Klamath. This conclusion of fact as to the presence of Yuroks on the Square prior to white settlement does not, of course, support the claim of the present

plaintiff Yuroks of the Addition, who were not introduced into the reservation until 1891, but it does negate the claim of the defendant insofar as it is based upon original exclusive Hoopa occupancy of the Square.

Another contention is that vested rights in the Square were conferred upon the Hoopas under a treaty made by Wiley at the time he established the reservation in 1864. This treaty, which made peace with the Hoopas and several other tribes then at war with the United States, obligated the United States "to set aside for reservation purposes for the sole use and benefit of the tribes of Indians herein named, or such tribes as may hereafter avail themselves of the benefit of this treaty, the whole of Hoopa Valley, to be held and used for the sole benefit of the Indians whose names are hereunto affixed

as the representatives of their tribes." It is conceded that this promise was not a treaty in the constitutional sense. Its making was not authorized, and it was not ratified. Its text is found as an attachment to a report by Wiley printed in the annual report for 1864 of the Superintendent of Indian Affairs; it is there captioned "Treaty of peace and friendship between the United States government and the Hoopas, South Fork, Redwood, and Grouse Creek Indians."

Putting aside any question of the binding quality of this document, it is not properly to be read as having sought to restrict the President's discretion under the act of 1864 or to give rights in the reservation to some tribes and withhold them from others. Within the week of the making of the treaty, Wiley in his first public notice locating the "Hoopas

Valley reservation" described the reservation only as an "Indian reservation" without any reference to who should occupy it. In the setting in which the treaty was presented to the Indians who agreed to it, described in the accompanying findings, the treaty is properly to be construed as a promise to devote Hoopa Valley to an Indian reservation for those tribes that would cease their hostilities and live at peace with the United States. So understood, the Klamaths or Yuroks were among its beneficiaries, for they laid down their arms and thenceforth remained at peace with the United States. There is good ground for concluding that though the caption of the treaty did not mention the Klamaths (Yuroks) as original parties, they were entitled to its benefits as among the tribes to whom the treaty was in

fact presented and who were thereby persuaded to lay down their arms.

It is perfectly plain that from the outset in 1864 all involved understood that the reservation was intended for an undetermined number of tribes including the Hoopas and the Klamaths, and that the authorities repeatedly acted on this assumption. Some Yuroks already lived in the Square in 1864 and others were soon settled there, according to the best data on the peoples of the reservation. Within a fortnight of his first notice locating the reservation, Wiley reported the precise names of the tribes occupying every reservation in California except the Hoopa Valley Reservation; the Hoopa Valley Reservation, he said contained "Various tribes." Soon thereafter Hoopas, Klamaths, and Redwoods appear as residents of the reservation. Saiaz, Wiyot,

Wylackie and Sinkyone Indians were moved to the reservation from elsewhere (and apparently did not remain, at least identifiably). In 1869 Wiley's successor had a plan (not executed, for reasons which do not appear) to move 1800 Klamath Indians to the reservation. The Klamath River Reservation (occupied by Yuroks and constituting the ocean end of what later became the addition to the Hoopa Valley Reservation) had been destroyed by flood in 1861, and efforts to resettle its Indians, Yuroks, had not been successful. The 1800 Klamaths were thus probably the forebears of the present plaintiffs.

The annual report of the Commissioner of Indian Affairs for 1872 stated that the Indians in the care of the agency at Hoopa Valley were the Humboldtsts (Wiyots and others), Hoonsoltons, Miscoelts, Saiaz and several other bands, numbering 725. The

reservation on the Trinity, the Commissioner said, "was set apart per act of April 8, 1864, for these and such other Indians in the Northern part of the State as might be induced to settle there." And in the years between the executive orders of 1876 and 1891 the Commissioner's annual reports contained a table giving the names of the tribes "occupying or belonging" to the various reservations. For the Hoopa Valley Reservation, the tribal names given were Hunsatang, Hoopa, Klamath River, Redwood, Saiaz, Sermalton, Miskut and Tishtanatan. During all these years, therefore, it was well understood that the reservation contained several tribes and was intended for whatever tribes might be settled there by authority of the President.

When, therefore, President Harrison by executive order of October 16, 1891

extended the boundaries of the reservation to include the contiguous strip of land along the Klamath River, there were no vested rights to the Square incapable of divestment, or at least dilution, by a Presidential introduction of additional tribes into the reservation. There could be no such rights in view of the President's authority under the act of 1864 and the manner of its exercise to that time.

The terms of the executive order (text in the note⁴) described the reservation as created under the act of 1864, and "extended" its "limits" "so as to include" the tract since called the Addition. No qualification was imposed on the incorporation of the Addition into the reservation, except that tracts on the Addition privately owned under the land laws were "excluded from the reservation as hereby extended."

Such words in an executive order, in this respect no different than the statute by whose authority it was made, are "to be read in their natural and ordinary sense, giving them a meaning to their full extent and capacity, unless some strong reason to the contrary appears (Miller v. Robertson, 266 U.S. 243, 250 (1924))." No reason to the contrary appearing, the order is to be given its natural effect of granting to the Indians of the Addition, as Indians of the enlarged reservation, rights in the reservation equally with the Indians of the Square.

The order has been held to be a lawful exercise of the President's "continuing authority," under the act of 1864, within his "large discretion" concerning the exercise of what authority, to "alter and enlarge" the reservation "from time to time in the light of experience."

Donnelly v. United States, 228 U.S. 243, 256-57 (1913). The President had no less power to enlarge a reservation created under the act of 1864 than he had to locate it originally. Five prior Presidents--Presidents Grant, Hayes, Garfield, Arthur and Cleveland--the Supreme Court noted, had made similar orders, with respect to the reservations authorized by the act, "altering and enlarging the bounds of the reservations, restoring portions of their territory to the public domain, and abolishing reservations once made and establishing others in their stead; and in numerous instances Congress in effect ratified such action." Donnelly v. United States, *supra* at 258.

As already noted, the plain and natural consequences of the order was the creation of an enlarged, single reservation incorporating without distinction its

added and original tracts upon which the Indians populating the newly-added lands should reside on an equal footing with the Indians theretofore resident upon it. This the President was as free to do under the reserved powers granted him by the act of 1864 as he had been free in the early years, without enlarging the reservation, to settle Redwoods, Saiaz and others and as he would have been free in 1869 to settle upon the reservation the Yuroks of the Klamath River Reservation. In introducing the Yuroks of the Addition into the enlarged reservation in 1891, on a basis of equality with their kinsmen and the several other tribes already there, the President was merely continuing to accommodate the tribes of the area in the Indian reservation in Northern California he had established under the act of 1864. Compare Halbert v. United States, 283 U.S.

753 (1931) and Quinaielt Tribe v. United States, 102 Ct. Cl. 822 (1945), on the President's power to enlarge a treaty reservation for the common benefit of the tribe originally settled there and tribes "in that locality."

Although the purpose of the executive branch in enlarging the reservation would seem to be apparent from the facts, the defendant reaches a different result entirely; it contends that the purpose of the executive order was to join the parts of the enlarged reservation only technically, for administrative purposes only, the Indians of each tract to retain their rights in their respective tracts. No hint of such a purpose appears on the fact of the executive order. And no support for such purpose appears in the data said by defendant to prove it--the background and origins of the executive order and of

legislation affecting the Klamath River Reservation, a part of the Addition. An exhaustive inquiry into the data, set out in detail in the accompanying findings, fails to reveal even a mention of such a purpose as defendant asserts, much less the compelling showing which would be required to curtail the ordinary consequences of the executive order.

The executive order originated in the Administration's desire to give reservation status to the Connecting Strip and the Klamath River Reservation, the latter then recently held by the courts to be an abandoned Indian reservation and threatened by Congress with a bill for its public sale. The object was to provide the legal basis for expulsion of white traders from the area and for the allotment of land in severalty to the Indians of the area, under the General Indian

Allotment Act of February 8, 1887 as amended (24 Stat. 388, 26 Stat. 794). Any qualification on the incorporation of the Addition into the reservation would have jeopardized the desired status, for only four reservations were permitted in California under the act of 1864 and four were already in existence. Full reservation status could come only from a bona fide merger of the Addition into the reservation, not a "technical" joinder, "for administration only," of a reservation with a dubious status to one of lawful status. In the enlarged reservation resulting from such a merger, there could be only equal rights for all Indians of the reservation.

Administrative opinions, in the years following the executive order of 1891, recognized both that a number of tribes including Klamaths, Hoopas and other

tribes were entitled to rights on the reservation and, with pointed relevance to the instant case, that the Indians of the Addition and the Square were equal in respect to rights in the lands of the Square. These opinions are described in the accompanying findings. In one of them, in 1916, it was ruled that the Hoopas, Klamaths and several other tribes were entitled to rights on the reservation. In another, in 1933, it was determined that allotments of land on the Square should cease, and assignments of land contingent on cultivation be substituted, because, it was held, the Indians of the Addition and the Square were equally entitled to allotment of lands and there was insufficient land for all those entitled.

Defendant attacks these rulings as erroneous, as made by men of lesser rank

and as covering only a short span of years. The rulings were sound, they were made by, among others, a Commissioner, a Chief Clerk of the Indian Office in 1916 (then the officer third in rank, next after the Assistant Commissioner), and they were made whenever there was need for them. No contrary ruling worth the mention was made in the Department of the Interior until the Secretary in 1955 began to pay the income from the Square to the Hoopa Valley Tribe and the Deputy Solicitor in 1958 wrote an opinion justifying the legality of his action. 65 Dec. Int. Dept. 59 (1958). That opinion is not supported by the defendant; the opinion does not reflect the facts found here, primarily the nonexclusive nature of the Hoopas' residence in the Square, and it proffers neither tangible support nor rational theoretical basis for its

assertion that the executive order of 1981 was intended only for administrative convenience.

The baseless belief that the Indians of the Square had exclusive rights in the lands of the Square seems to have grown from the remoteness of the Addition from the Square, the roughness of the terrain of the former, and the different stock of their respective inhabitants. The error flowered during the inordinate delay--from 1894 to 1922--between the time of allotment of Addition lands and allotment of land on the Square. The Indians of the Square, deprived for so long of allotments, became understandably jealous and possessive for the entire Square.

The 1891 executive order, however, withstands all attacks. It was fully authorized by the act of 1864. No vested Indian rights in the Square existed, and

the effect of the order was to enlarge both the area and the population of the reservation, without any limitation on the rights of all the Indians in the communal lands of the enlarged reservation.

Turning to the cases of the 26 individual plaintiffs, stated in detail to the findings, it appears that 22 of them, named in the accompanying ultimate findings and conclusions, are sufficiently proven to be Indians of the reservation to warrant a determination now that they are entitled to recover, in amounts to be calculated after all the 3,323 claims are tried and determined. In the cases of the remaining four, there are questions--of possible loss of reservation rights or of degree of Indian blood--as require that their cases be retried or rebriefed, as seems indicated in each case. With the common issue of exclusive right out of the

way, the parties through their counsel will presumably be able to address themselves to the individual claims, and agree upon standards for the recognition of individual claims. There should be no reason to insist upon a formal appearance by each claimant in court. Sworn testimony may be given by affidavit or in the equivalent of a deposition, followed by stipulation for judgment where no contest is planned.

FINDINGS OF FACT*

1866-64--The Klamath River Reservation

1. On November 16, 1855 the President directed that there be set aside in

* Findings are grouped and titled for convenience; neither placement nor title affects the findings, and a title does not necessarily describe all the findings which follow.

Northern California, as the Klamath River Reservation, "a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River" for a distance of approximately 20 miles, not to exceed 25,000 acres.

The President acted pursuant to the Act of March 3, 1853 (10 Stat. 226, 238), as amended March 3, 1855 (10 Stat. 686, 699), which authorized the creation of 7 military reservations in California or in the Territories of Utah and New Mexico.

2. In Northern California the Klamath River first flows southwest to its junction with the Trinity River (which flows north and is essentially a branch of the Klamath) and then, veering sharply to the northwest, continues to the ocean. The two rivers thus form a Y whose arms are the Klamath and whose trunk is the Trinity. The Klamath River Reservation,

on the upper half of the Y's left arms, extended upstream, from the ocean, for $\frac{1}{2}$ the distance of the left arm to about 25 miles from the junction of the two rivers.

3. At the time of its creation in 1855, the Klamath River Reservation was occupied by about 2,000 Indians of the Yurok tribe, also known as Klamaths.

"Klamath," the name also of a more northerly group of Indians in Oregon, is as used herein and in the documents considered herein the name of the Indians resident, generally speaking, in the basin of the Klamath River in Northern California.

4. The tribe of Klamaths living down river on the Klamath were the Yuroks. Yurok means down river. Those living up river (roughly speaking beyond the Trinity's junction with the Klamath) were the Karoks. Karok means up river.

Sometimes Yuroks are called Lower Klamath Indians, the adjective "lower" meaning they live below the junction of the two rivers.

The Indian tribes of Northern California were not organized or large entities; Indians resident on a particular river or fork were a "tribe." Tribal names were often applied inexactly and usually meant a place of residence.

"Hoopa" is used herein instead of its other forms, "Hupa" and "Hoopah." References to Hoopas and the Hoopa tribe should be distinguished from the membership of the Hoopa Valley Tribe, the amicus curiae, an organization created in 1950 with intricate membership rules.

5. The native villages of the Lower Klamaths or Yuroks were located on the Pacific coast from Wilson Creek, north of the mouth of the Klamath, to Little

River, south of the Klamath, along the Klamath River from its mouth to Bluff Creek, located a short distance upstream from the Klamath-Trinity junction, and (of particular significance in this case) in the canyon of the Trinity River in the most northerly part of the river near the junction of the Trinity with the Klamath and in a village a small distance from the Trinity.

6. The native villages of the Upper Klamath Indians of Karoks were along the upper Klamath, from point just above Bluff Creek, upstream to Indian Creek. Weitchpec, a village at the junction of the two rivers, is often treated as the dividing point, and is allotted to the Yuroks.

7. Following the creation of the Klamath River Reservation, Indians of other tribes were moved to the

reservation, among them 500 Tolowa Indians brought in 1856 from their native territory on the Smith River near the Oregon border. By 1858, a large majority of these Tolowas returned to their former territory.

8. In 1861, the Klamath River Reservation was flooded, and nearly all the arable land was described. The Superintendent and a number of the Indians of the reservation moved to the Smith River Indian Reserve on the Smith River near the Oregon boundary. Since the Klamaths lived principally on the salmon in the river, a substantial or greater number of them refused to leave and remained in the area and in the area further up river. Many of those who moved to the Smith River Reservation soon or eventually returned to their former territory on the Klamath.

9. Because the following findings turn away from the Klamath River Reservation to the establishment of the Hoopa Valley Reservation and do not return to the Klamath River Reservation until 1891, a brief foresight is given: Those Indians who remained on the Klamah River Reservation eventually came under the supervision of the Indian Agency for the area, located at the Hoopa Valley Reservation on the Trinity River southward from its junction with the Klamath, after that reservation was provisionally located in 1864. Thereafter, in 1891, the Hoopa Valley Reservation was enlarged, by executive order, to include not only the Klamath River Reservation but the connecting strip of land along the Klamath River between the two reservations.

The Act of April 8, 1964

10. The Act of April 8, 1964 (13 Stat. 39), the source of all claims herein and of central importance in this case, authorized the President in his discretion to set aside "not exceeding four tracts of land" within the State of California, at least one of them to be in the northern district, "for the purposes of Indian reservations," to be located "as remote from white settlements as may be found practicable." The reservations were to be "of suitable extent for the accommodation of the Indians of said state" and they were to include, in the President's discretion, any existing Indian reservations, "enlarged to such an extent as in the opinion of the President may be necessary." The remaining several

reservations in California were to be surveyed into lots and offered for public sale.

The text of the relevant portion of the Act is as follows (13 Stat. 40):

Sec. 2. And be it further enacted, That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said state, and shall be located as remote from white settlements as may be found practicable, having due regard to their adaptation to the purposes for which they are intended: Provided, That at least one of said tracts shall be located in what has heretofore been known as the northern district: And provided, further, That if it shall be found impracticable to establish the reservations herein contemplated without embracing improvements made within their limits by white persons lawfully there, the Secretary of the Interior is hereby authorized and empowered to contract for the purchase of such improvements, at a price not exceeding a fair valuation

thereof, to be made under his direction. But no such contract shall be valid, nor any money paid thereon, until, upon a report of said contract and of said valuation to Congress, the same shall be approved and the money appropriated by law for that purpose: And provided, further, That said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said state, and that in case any such reservation is to included, the same may be enlarged to such an extent, as in the opinion of the President may be necessary, order its [sic] complete adaption to the purposes for which it is intended.

Sec. 3. And be it further enacted, That the several Indian reservations in California which shall not be retained for the purposes of Indian reservations under the provisions of the preceding section of this act, shall, by the commissioner of the general land-office, under the direction of the Secretary of the Interior, be surveyed into lots or parcels of suitable size, and as far as practicable in conformity to the surveys of the public lands, which said lots shall, under his direction,

be appraised by disinterested persons at their cash value, and shall thereupon, after due advertisement, as now provided by law in case of other public lands, be offered for sale at public outcry, and thence afterward shall be held subject to sale at private entry, according to such regulations as the Secretary of the Interior may prescribe; * * *

11. Shortly after the passage of the act, Austin Wiley, already in the service of the Indian Bureau in California, was appointed Superintendent of Indian Affairs for California and directed to give his immediate attention to the matter of the location of the four reservations authorized by the act, so that the Department of the Interior could have the benefit of his judgment in making the locations.

First Location of a Reservation in
Hoopa Valley

12. At that time a number of Indian tribes of Northern California had for some years been at war with the forces of the United States. Many Indians had been taken prisoner. Other warriors, headquartered in Hoopa Valley, were willing to surrender. On his appointment Wiley proceeded to Hoopa Valley, treated with the tribe there represented, and there located a reservation by the public notice set out in the following finding.

13. On August 21, 1964, Superintendent Wiley gave public notice that he had located an Indian reservation, to be known as the Hoopa Valley Reservation, on the Trinity River in Klamath County, California, the boundaries to be thereafter prescribed.

The notice in its entirety read as follows:

By virtue of power vested in me by an act of Congress approved April 8, 1864, and acting under instructions from the Interior Department, dated at Washington city, D.C., April 26, 1864, concerning the location of four tracts of land for Indian reservations in the State of California, I do hereby proclaim and make known to all concerned that I have this day located an Indian reservation, to be known and called by the name and title of the Hoopa Valley Reservation, said reservation being situated on the Trinity river, in Klamath county, California, to be described by such metes and bounds as may hereafter be established by order of the Interior Department, subject to the approval of the President of the United States.

Settlers in Hoopa valley are hereby notified not to make any further improvements upon their places, as they will be appraised and purchased as soon as the Interior Department may direct.

Austin Wiley,
Sup't Indian Affairs for
the State of California.
Fort Gaston, Cal., August
21, 1864.

14. The Klamath County of that day, in which the new reservation was located, has since been largely added to present-day Humboldt County. Irregularly shaped, it included the area north and south of the Klamath above its junction with the Trinity and stretching eastward to the Salmon River, the area north and south of the Klamath below its junction with the Trinity to about the beginning of the Klamath River Reservation, and the territory contained within a line drawn along the Klamath for the extent of the Klamath River Reservation, then going southward along the coast to about the mouth of the Mad River, then going due eastward to about the southerly point of the Hoopa Valley Reservation and then, irregularly, going further east. See the map entitled Colton's California,

published by J. H. Colton, 1864, available at the Library of Congress.

In terms of the Y mentioned above, Klamath County included the territory west of the left arm and trunk, to the ocean, the territory east of the right arm and trunk, to be beyond the Salmon River, substantial territory north of the Y's right arm, and north of its left arm to the inland end of the Klamath River Reservation. The county thus included a great part of the native territory of the Klamath Indians (see findings 5, 6, supra).

The "Treaty" Made in Hoopa Valley in 1864

15. A "treaty" made by Wiley with the Indian tribes at the time he located the reservation appears as an attachment to a report Wiley wrote on August 19,

1864, some days after his public notice. The report and the attached documents are set out as they appear in the annual report of the Commissioner of Indian Affairs for 1864:

Office of Indian Affairs,
San Francisco, California,
August 29, 1864.

Sir: On the 2d ultimo I informed you that I would start for the north for the purpose of making some kind of a settlement with the hostile Indians in the Humboldt military district. The headquarters for the Indians who have been engaged in the war in that portion of the State for five years past is Hoopa valley, on the Trinity river. I arrived there on the 10th ultimo, and found most of the hostile Indians in the valley, with their guns still in their hands, waiting my arrival.

They had been induced to come in by the officers commanding the district, under promise of protection until terms could be arranged; but so cunning were they, and so suspicious of white men, that they kept most of their guns hid, and were constantly on the alert, ready to break to the mountains in case any effort should be made to remove them to a reservation. They protest that they prefer

death or starvation in the mountains to removal.

I found among the leaders, and those having the most influence, young men, those that I had known as boys, most of whom have had more or less experience among white men as packers, herdsmen, farmers &c. They all speak English and are intelligent. They make dangerous enemies, but I have every reason to believe they will comply with every obligation they have subscribed to if I keep my faith with them. The old Indians used their influence against giving up guns, and protested that I would lie to them, as other agents had done; but the influence is now all in the hands of the younger or "second crop" Indians. They are the ones to be conciliated; peace with them secures peace with all. Enclosed you will find copy of a treaty I proposed, and which they finally accepted. From the 16th to the 21st day they were busy in delivering up their guns and pistols, many of them being hid out miles from the valley. On the 22d I issued the notice marked B, called a meeting of the settlers, and made known to them what terms I had offered the Indians to secure peace. They were all well satisfied, with, perhaps, the exception of two or three whose associations have been exclusively among the

Indians. Several of the settlers will have their places this fall, trusting to the government to pay them for their improvements.

The title to the whole of the lands in the valley is vested in the government, and as the improvements only are to be purchased, a very large sum will not be required. A good flouring mill and a fine saw-mill are there. The valley is beautifully located, surrounded by high mountains, well watered, with land enough in cultivation to feed all the Indians that are there or that may come there. Trinity river affords them fish during the spring and fall season, and the mountains on either side abound with acorns, berries, seed &c.

At present there are about six hundred Indians in the valley. I appointed L. C. Beckwith a temporary special agent there at the request of the Indians themselves. I authorized him to assist them in building new houses, (their old ones having been burned during the war,) and to incur such expense as was absolutely necessary in preparing shelter for them before winter set in.

Enclosed please find a rough sketch of the valley; which, without being accurate in detail, will give you some idea of its situation and the location of the improvements.

I propose to take the whole of the valley and to the summit of the mountains on each side, which is about five miles. There are no improvements upon the proposed reservation excepting those within the valley.

I trust my action will be approved, and that no time will be lost by the department in having the improvements appraised. We shall want to commence ploughing there in November for our next year's crop, and the sooner the citizens and Indians know that the valley is to be the property of the latter, the better it will be for all concerned.

Soliciting your earliest attention to this matter, I remain, very respectfully, your obedient servant,

Austin Wiley,
Superintendent of Indian
Affairs, California.

Hon. William P. Dole,
Commissioner.

Treaty of peace and friendship
between the United States
government and the Hoopa, South
Fork, Redwood, and Grouse Creek
Indians.

Article I.

Sec. 1. The United States government, through Austin Wiley, superintendent of Indian affairs for the State for California, by these presents doth agree and obligate itself to set aside for reservation purposes for the sole use and benefit of the tribes of Indians herein named, or such tribes as may hereafter avail themselves of the benefit of this treaty, the whole of Hoopa valley, to be held and used for the sole benefit of the Indians whose names are hereunto affixed as the representatives of their tribes.

Sec. 2. Said reservation shall include a sufficient area of the mountains on each side of the Trinity river as shall be necessary for hunting grounds, gathering berries, seeds, &c.

Sec. 3. The United States government shall provide suitable clothing and blankets for the men, women, and children, which shall be distributed each year by the agent in charge.

Sec. 4. Suitable instructions shall be given the squaws to enable to them to make their own clothing, take proper care of their children, and become generally efficient in household duties.

Sec. 5. An agent and a sufficient number of employees to instruct the Indians in farming and harvesting shall be

appointed, to reside upon the reservation, and no other white men shall be permitted to reside upon said reservation, except such as are in the military service of the United States or employed in government service.

Sec. 6. A physician shall be appointed to reside upon the reservation, whose duty it shall be to minister to the wants of the sick and look to their health and comfort.

Article II.

Sec. 1. All Indians included among those subscribing to this treaty must obey all orders emanating from the agent in charge.

Sec. 2. No Indians belonging to either of the tribes herein enumerated shall go beyond the limits of said reservation without a written pass from the agent in charge. All so offending shall not be deemed friendly, and shall be hostile Indians.

Sec. 3. All Indians who have taken part in the war wages against the whites in this district for the past five years shall be forgiven and entitled to the same protection as those who have not been so engaged.

Sec. 4. All guns and pistols shall be delivered to the commanding officer at Fort Gaston, to be held in trust by him for the use and benefit of the

Indians, to be used by them in hunting only, in such numbers and for such length of time as the agent may direct. All ammunition in their charge to be turned over the agents and paid for at its actual value in Indian money.

Indian Reservation Notice.

[There followed the text of the notice of the location of the Hoopa Valley Reservation, which appears in finding 13, supra.]

16. Commissioner W. P. Dole responded to Wiley's letter (foregoing finding) on October 3, 1864 as follows:

Department of the
Interior.

Office Indian Affairs,
October 3, 1864.

Sir: Your communication, dated August 29, 1864, enclosing a draught of the agreement made by you with the lately hostile Indians of the Trinity river, with the sketch of the situation of and settlements in the Hoopa valley, and the notice issued by you to the settlers, under date of--, is received and duly considered.

From your description of the valley thus selected for a reservation, its fertility, and consequent capability to sustain the people proposed to be placed upon it, its isolation from the white settlements, and the willingness expressed by the Indians to acquiesce in the arrangements, and confine themselves to the locality selected, I am induced to approve of your action, and trust that great good will result to the Indians, as well as to the whites, by this close of an expensive course of hostilities, and the consequent concentration of the Indians at a point where they can be controlled, and where measures may be adopted to improve their condition. I return herewith a copy of the agreement, as forwarded by you, with certain additions, suggested by the Secretary of the Interior, the document in this amended form meeting with his approval.

The relations of the government of the United States to the Indians of California do not contemplate treaties with those Indians, to be submitted by the President to the Senate for confirmation; but as it is deemed advisable to have the chiefs and leading men of the tribes in question subscribe their hands to a document which shall fully commit them hereafter, you will, after explaining

to them the nature of the additions or alterations now suggested, as being intended solely for their benefit, cause a copy to be signed by them, and forward it to this office.

* * * * *

The establishment of the Hoopa Valley reservation, if approved, of course contemplates the abandonment of that at Mendocino, as but four are authorized, and it is understood from your communication of later date than the one to which this is a special reply, that the Indians upon the latter reservation are to be removed this fall to Round valley.

You will please take special care in the description of the boundaries of the proposed reservation at Hoopa valley, so that its proper limits may be of record in this office and the General Land Office, when approved by the President of the United States.

Very respectfully, your obedient servant,

W. P. Dole, Commissioner.

Austin Wiley, Esq.

Sup't. Indian Affairs, San Francisco, California.

17. It is conceded that Wiley's "treaty" (finding 13, supra) was not ratified. (Even agreement is doubtful.

No signatures by Indians appear (foregoing finding), and it has not been shown that the Commissioner's desired amendments (foregoing finding) were ever made known to any Indians or approved by them. In a public notice, however, Wiley said that the treaty stipulations were "confirmed" on February 8, 1865.)

18. From Wiley's letters, reported in the Commissioner's report for 1864) (which is the "Indian Report, 1864" and the source of all the page references mentioned below), it appears that

(a) The Klamath Indians were among the Indians at war with the forces of the United States. ("[T]he Klamath and Hoopa or Trinity Indians were at war with the forces of the United States at the time of the passage of the act of 1864, and had been so for some years. Indian Report, 1864, pp. 123, 127, 130, 133, 134-138."

Donnelly v. United States, 228 U.S. 243, 257 (1913).

In one of Wiley's letters, he referred to the "Klamuth, Redwood and Trinity Indians, with whom we are now at war." P. 125; see also pp. 120-21. In other letters he wrote of the war with the Indians of Humboldt, Klamath and Trinity counties (pp. 116, 130). The Indians of Klamath County were surely the Klamath Indians (see findings 3, 5, 6, 14, supra), and it therefore appears that Wiley double referred to the Klamath Indians, both as "Klamath" Indians and as the Indians of Klamath County.

(b) The Warring Indians who had not been taken prisoner had made their headquarters in Hoopa Valley; they were ready to surrender. Pp. 130, 131, 133, 134.

(c) Wiley went to Hoopa Valley, treated with the various tribes he found

there, persuaded them to accept his "treaty," established a reservation and thereby brought to an end the war with the Indians of Humboldt, Klamath and Trinity counties (pp. 116-117, 119), who, as noted above, included the Klamaths.

(d) From the foregoing it follows and is found that despite the caption of the "treaty," describing it as made with the "Hoopa, South Fork, Redwood, and Grouse Creek Indians" (finding 15, supra), the tribes with whom it was made included the Klamuths.

(e) A reservation to be shared by Hoopas and Klamaths was not an unfamiliar idea. A treaty concluded in 1851 with bands of Indians of those tribes (but not ratified) would have created such a reservation of a tract which in substantial part coincided with what eventually became the Hoopa Valley Reservation.

19. After 1864 the Klamaths lived in peace in and in the area of the Klamath River Reservation, in their villages on the Trinity near the Klamath, on the connecting strip of land between the two reservations, and elsewhere. It follows, therefore, that even if the Klamaths were not originally among the tribes with whom Wiley made his treaty, they availed themselves of its benefits within the intendment of its Article I, Section 1 (finding 15, supra), and thereby became entitled to its benefits.

20. With his letter annual report of September 1, 1864 Wiley enclosed a tabular "Report of Indians on the reversion-within the California superintendency, September 1, 1864," containing the name of the reservation, names of tribes, and numbers of Indians, male, female and total. For each of the four reservations

other than Hoopa Valley he listed the names of tribes occupying the reservation. For Hoopa Valley, he reported "Various tribes, about 600," giving no tribal names and no numbers for male and female.

1865--The 12-Mile Square as the Boundary
of the Hoopa Valley Reservation

21. Wiley's first notice had given no hint of the size of the reservation he "located"; the notice had said that the reservation, which he called the "Hoopa Valley Reservation" was "situated on the Trinity River, in Klamath county, California, to be described by such metes and bounds as may hereafter be established by order of the Interior Department, subject to the approval of the President" (finding 13, supra).

Wiley's second public notice, on
February 18, 1865, read as follows:

To Whom It May Concern:

Be it known that by virtue of power vested in me by Act of Congress passed April 8th, 1864, and acting under instructions from the Department of the Interior, I have located and set aside for an Indian Reservation the following described tract of land to be known as the Hoopa Reservation: Beginning at a point where Trinity river flows into Hoopa valley and following down said stream, extending six miles on each side thereof, to its junction with Klamath river, as will be more particularly described by a map of said Reservation.

Notice is hereby given to all persons not to settle or improve upon said Indian Reservation excepting as the Agent in charge may permit, and in no manner to trespass thereon or interfere therewith.

Free transit through the Reservation will be permitted all travelers, packtrains and stock, subject to such restrictions as the local Agent may see prior to impose.

Austin Wiley,
Sup't Ind. Aff's, Cal.
Hoopa Reservation, Cal.,
February 18th, 1865.

(No such map as is mentioned in this notice has been referred to by the parties.)

In the first notice (finding 13, supra) Wiley had called the reservation the "Hoopa Valley reservation." According to a letter he wrote (on August 2, 1864) about the time of the first notice (August 21, 1864) he was then thinking of an area about 5x2 miles. The valley is about 6 miles long and the canyon north of it is another 6 miles long. The treaty contemplated a reservation of the "whole of Hoopa valley." When, therefore, the public notice in 1865 described a reservation whose north-south dimension was the river from the beginning of the valley on the south to the junction with the Trinity on the north, the reservation was being doubled in size, in that dimension alone. And, significantly, the added area in the

north--the canyon of the Trinity near the junction with the Klamath--was native territory of the Yuroks.

The Trinity River in the Hoopa Valley, described by Wiley in the foregoing notice as bisecting the reservation he located, flows north through the valley to the junction of the Trinity and the Klamath. The valley of the reservation was for a time thought of as 16 miles long, but was finally regarded as 12 miles in extent. Since the reservation was described as extended 6 miles on each side of the river, to the junction of the two rivers, the reservation formed a 12-mile square bisected by the last 12 miles of the Trinity River, and was to be called the "Square" or the "12-mile Square."

The Square was centered on the trunk of the Y formed by the two rivers (finding 2, supra). Compared to the square,

the Klamath River Reservation was in terms of the Y a thickening of the upper half of the Y's left arm (finding 2, supra). Actually, the boundaries of the Klamath River Reservation zigzagged, following the river's turnings. Between the two reservations was non-reservation land and a stretch of the Klamath River about 25 miles long.

1864-1875--The Peoples of the Hoopa Valley
Reservation

22. As of February 18, 1865, when Superintendent Wiley defined the boundaries of the Hoopa Valley Reservation (foregoing finding), there have been identified, among the "various tribes" resident there (finding 20, supra), a substantial number of the Hoopa tribe living in several villages in the Hoopa

Valley proper, a smaller group of Lower Klamath or Yurok Indians living in a few villages in the northern and northwestern part of the tract and a number of Indians of the Redwood or Chilula tribe. (See findings 5, 20, supra.)

23. The native villages of the Hoopas were along the Trinity River in the Hoopa Valley, within the Square, and continuing upstream (south) to, at least, the Trinity's south fork, beyond and south of the Square.

24. The native villages of the Redwoods or Chilulas were elsewhere than on the Klamath or Trinity Rivers.

25. In 1865, Charles Maltby, the Superintendent of Indian Affairs, California, reported that it was expected that some 1,800 Klamath River Indians would move to the Hoopa Valley Reservation. The move did not take place.

26. Superintendent Maltby's report for 1865 states that the Hoopa Valley reservation could support only the Indians living there at that time and "those that will probably come in from the vicinity."

27. A report of B. C. Whiting, Superintendent of Indian Affairs, California, to the Commissioner in 1868 stated that he was preparing a large number of Indian houses at Hoopa Valley for the Smith River Indians and such others as he could collect together.

28. (a) In 1869 more than 300 Indians were moved by the Superintendent to Hoopa Valley in the Hoopa Valley reservation from the Smith River Reservation, terminated by statute. These Indians were of the Saiax or Nongatle, the Wiyot, Wylackie and Sinkyone tribes. The native villages of these tribes were

elsewhere than on the Klamath or Trinity Rivers.

(b) The report for 1872 by the Commissioner of Indian Affairs in revealing for its identification of the reservation with Indians generally in Northern California and its recognition of the varied tribes then on the reservation.

The report said:

Hoopa Valley agency.--The Indians belonging to this agency are the Humboldts, Hoonsoltons, Miscolts, Siahs, and several other bands, numbering 725.

A reservation was set apart per act of April 8, 1864, for these and such other Indians in the northern part of the State as might be induced to settle thereon. This reservation is situated in the northwestern part of the State, on both sides of the Trinity River, and contains 38,400 acres. * * *

Formal Location of the Reservation by

Executive Order in 1876

29. Wiley's location of the

reservation in 1865 was soon implemented by legislation for payment for the improvements made by settlers, but his action did not get Presidential confirmation for 11 years, until 1876.

By Executive Order of June 23, 1876, President Grant formally defined the boundaries of the Hoopa Valley Reservation as follows:

It is hereby ordered that the south and west boundaries and that portion of the north boundary west of Trinity River surveyed in 1875 by C. T. Bissel, and the courses and instances of the east boundary, and that portion of the north boundary east of Trinity River reported but not surveyed by him, viz: "Beginning at the southeast corner of the reservation at a post set in mound of rocks, marked "H.V.R. No.3"; thence south $17\frac{1}{4}^{\circ}$ west, 905.15 chains, to southeast corner of the reservation; thence south $79\frac{1}{4}^{\circ}$ west, 480 chains, to the mouth of Trinity River," be, and thereby are, declared to be the exterior boundaries of Hoopa Valley Indian Reservation, and

the land embraced therein, an area of 89,572.43 acres, be, and hereby is, withdrawn from public sale, and set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in California, by act of Congress approved April 8, 1864. (13 Stats. p. 39.)

The metes and bounds description of the reservation in this executive order encompassed substantially the same tract of land defined by Superintendent Wiley's more general description of February 18, 1865 (finding 21, supra), namely, an approximately 12-mile square tract bisected by a stretch of the Trinity River beginning at its junction with the Trinity River and continuing upstream for 12 miles for the extent of the Hoopa Valley.

Though the Commissioner in his letter of October 3, 1864 had cautioned Wiley to take special care in fixing the boundaries of the reservation "so that its proper limits may be of record in this office and

the General Land Office, when approved by the President of the United States," the President's order is the first precise description of the reservation.

1876-1891--The Peoples of the Hoopa
Valley Reservation

30. In 1875 and 1876, at about the time of the executive order formally defining the boundaries of the Hoopa Valley Reservation (preceding finding), there have been identified as living with the Hoopa Valley Reservation Indians the following tribes:

Tribe	1875	1876
Hoopas	571	511
Klamaths	43	44
Redwoods	46	12
Shiaz	56	13

31. From 1877 to 1891 there appeared in the annual reports of the Commissioner of Indian Affairs a schedule of all reservations listing, for each reservation among other things, "tribes occupying or belonging to the reservation." For the Hoopa Valley Reservation the tribes named were Hunsatang, Hoopa, Klamath River, Redwood, Saiaz, Sermalton, Miskut and Tishtanatan. The Husatang, Sermalton, Misjut and Tishtanatan were regarded as "bands" of Hoopas, closely related to them.

32. In 1886 the Indians living on the Hoopa Valley Reservation included Hoopa, Yurok, Karok and Redwood Indians, according to the first census of the reservation, described below in finding 37.

The Enlargement of the Hoopa Valley
Reservation by Executive Order in 1891

33. On October 16, 1891, by executive order, President Harrison extended the "Hoopa Valley Reservation" to include a tract "one mile in width on each side of the Klamath River" from the then northern boundary of the "Hoopa Valley reservation" to the Pacific Ocean:

Executive Mansion,
October 16, 1891.

It is hereby ordered that the limits of the Hoopa Valley Reservation in the state of California, a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in said State, by Act of Congress approved April 8, 1864, (13 Stats., 39), be and the same are hereby extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley reservation to the Pacific Ocean; Provided, however, That any tract or tracts included within the above

described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended.

Benj. Harrison.

34. President Harrison's order added to the Square the Klamath River Reservation, at the upper end of the Y's left arm (finding 22, supra), and the strip of land between the two reservations. The newly-added lands are herein called the "Addition."

The enlarged reservation consisted of the Addition, a tract 45 miles long x 2 miles wide, extending the length of the Y's entire left arm, joined to the 12-mile Square. The shape of the Addition and the Square combined was something like a square skillet with an extraordinarily long, thin handle.

In the enlarged reservation, the former Klamath River Reservation is herein called the "Lower Klamath Strip," and the

intermediate strip of land is called the "Connecting Strip."

The entire reservation as enlarged contained 147,740 acres, 25,000 in the Lower Klamath Strip, 33,168 acres in the Connecting Strip, and 89,572 acres in the Square.

Access of Addition and Square Indians
to the Enlarged Reservation

35. After 1891 Indians living on the Addition freely fished and hunted and gathered basket materials on the square, and Indians of the Square freely fished and gathered basket materials on the Addition. There is no evidence that this was not the case prior to 1891.

36. After 1891, Indians of the Addition attended the boarding school maintained by the Government at the Indian

Agency at Hoopa, on the Square, and came for medical treatment to the Government hospital there. There is no evidence that this was not the case before 1891, and there is some evidence that Indians from elsewhere than the reservation also came to the hospital for medical treatment.

Censuses on the Hoopa Valley Reservation

37. The first census roll listing the individual Indians of the original Hoopa Valley Reservation was compiled in 1886 under the supervision of Superintendent Dougherty. It was prompted by the Act of July 4, 1884, 23 Stat. 98, which instituted a practice of the annual taking of a census of Indians upon reservations.

This first census roll was entitled "Census of the Different Ranches of the Hoopa Valley Indians." It (and all

censuses until 1930) did not show the tribe of the listed Indian. However, the Indians listed included, in fact, members of the Yurok, Karok and Redwood tribes, as well as Hoopas.

38. The 1837 census on the Hoopa Valley Reservation was designated the "Census of the Hoopa Valley Tribe of Indians." In 1888 and 1889, the census was headed "Census of the Indians of the Hoopa Tribe." In 1890 it was on some pages headed "Census of Hoopa Valley Reservation Indians" and on others "Census of the Hoopa Indians."

The Indians listed in these censuses included members of the Hoopa, Klamath River (Yurok and Karok) and Redwood tribes.

39. In 1892, the first year after the enlargement of the Hoopa Valley Reservation, and again in 1894, the

reservation census was recorded in two parts. One part, variously called a census of the "Hoopa Indians of the Hoopa Valley Agency" and a census of the "Hoopa Valley Indians," listed the Indians on the Square, including the non-Hoopas resident there. The other part, called a census of the Klamath Indians of the Hoopa Valley Agency, listed the Indians on the Addition.

40. In 1893, and again in 1895, 1896, 1897, and 1899 (no census was taken in 1898; two were taken in 1899) only a census of the Indians on the Square was taken. In 1893 and 1899 it was called a census of the "Hoopa Valley Indians." As before, it included the non-Hoopas on the Square.

41. The 1900 census of the Hoopa Valley Reservation intermingled in one list the Indians on the Square and on the

Addition and was designed the "Census Roll of the Hoopa and Lower Klamath River Indians." These Indian names were as before not meant to be tribal but rather geographical; Karoks and Redwoods were included.

42. From 1901 through 1907, a census was taken only of the Indians on the Square. In these years the census was referred to as a "Census of the Hoopa Indians." As before, it listed Yuroks, Karoks and Redwoods in addition to Hoopas.

43. Beginning in 1910 and continuing each year through 1933, the census was recorded in three parts. One part was entitled "Census of the Hoopa Indians," another was the "Census of the Klamath River Indians of the Connecting Strip" and the third, "Census of the Lower Klamath River Indians." While most

of those listed on the third part, "Census of the Lower Klamath River Indians," were of the Lower Klamath or Yurok tribe, the designation "Lower Klamath River Indians" did not refer to the Lower Klamath River or Yurok tribe as distinguished from the Upper Klamath River or Karok tribe, but rather meant the Indians on the Lower Klamath Strip. Most of those on the list entitled "Census of the Klamath River Indians of the Connecting Strip" were Lower Klamath or Yurok Indians.

As before, the list entitled "Census of Hoopa Indians" listed the names of the Indians on the Square regardless of whether they were of the Hoopa, Yurok, Karok, Redwood or other blood.

44. Superintendent Keeley of the Hoopa Indian Agency wrote to the Commissioner on October 24, 1919 that it was

meaningless to divide the Indians supervised by the Agency into Hoopas, Klamath River Indians, Lower Klamath Indians and the other tribes of whom census rolls were prepared annually:

So far as these names are concerned and these divisions, they now mean nothing to us. At one time they possibly meant a division of the Indians so far as residence was concerned, but they have moved about so much and intermarried, and they have apparently been transferred at different times from one census to another until such division is absolutely worthless and confusing.

They have lost tribal affiliation to such an extent that very few of them know what tribe they belong to, and if they name a tribe, it is, in fact not a tribe but a band of Indians named after some local name of a place where they once resided. This division has resulted in many duplications, we found when the enrollment of California Indians was made by Mr. John H. Anderson.

I am now asking authority to revise this census and make up a new one, corrected in accordance with the affidavits furnished Mr. Anderson as to families, same to be a strictly

alphabetical roll of the Indians under the jurisdiction of the Hoopa Valley Agency without the divisions noted above.

45. The census forms were revised for the year 1930 to include a space for designating the tribe of the individual to be listed, but the tripartite division was retained. The provision of a space for the tribe of the person listed did not appreciably improve the accuracy of the census as an indicator of tribal affiliation. Those listed on the part of the census entitled "Census of the Hoopa Indians" were nearly always designated as a member of the Hoopa tribe even though they were actually Lower Klamath (Yurok), Upper, Klamath (Karok), Redwood Indians or of the blood of more than one tribe. The individuals on the part entitled "Census of the Klamath River Indians" were designed as members of the Klamath River tribe and those in the census part

entitled "Census of the Lower Klamath River Indians" were designed as members of the Lower Klamath tribe.

46. Some censuses listed off-reservation people, with off-reservation addresses. From about 1930, inclusion in the census was based not on residence but upon a concept of enrollment on the reservation equivalent to entitlement to be regarded as a reservation Indian (see findings 199, 207, 211, infra).

47. On January 12, 1933 special Agent Roblin reported that the census rolls of Klamath River and Lower Klamath River Indians were inextricably mixed. Intermarriage and changes of residence had resulted in changes of names from one roll to another. Some of the confusion came, he said, from the use of the words Lower Klamath, the name of the strip consisting of the former Klamath River

Reservation; the Indians themselves referred to all Indians living below a village near the junction of the Klamath and Trinity as "lower Klamaths," which would leave all of the original Klamath River Reservation and the Connecting Strip in "Lower Klamath" country. The text of the relevant "Note" to his letter is set out in finding 94, infra, in another connection.

48. The tripartite division of the roll was ended in 1933. From that year until the last complete reservation roll was compiled in 1940, the Hoopa Valley Reservation roll was in a single part. The Indians designated as of the Hoopa tribe and as of the Klamath River tribe were intermingled, the designation Lower Klamath was dropped entirely. The roll continued to designate nearly every Indian residing on the Square as of the Hoopa

tribe whether or not he actually was of Hoopa blood. In a few instances, mixed-blooded Indians were designated as Hoopa-Klamaths. On the 1940 roll, the designation Yurok was substituted for Klamath River. No roll was compiled in 1941. In the years 1934, 1935, 1938, 1939 and 1942 only supplementary rolls were compiled. No rolls were compiled thereafter.

Background of the 1891 Executive Order and
the Act of June 17, 1892

49. (a) For about 20 years prior to the 1891 executive order there had been repeated recommendations by various officers that a reservation be established along the Klamath River for the Indians living there or that the Hoopa Valley Reservation be enlarged to encompass parts or all of the land bordering on the

Klamath to the Ocean. Some of these recommendations are described in the following subparagraphs.

(b) A report of Special Commissioner John V. Farwell to the Commissioner in 1871 urged that the efforts of the Government to civilize the Indians would be facilitated by the extension of the Hoopa Valley Reservation to the mouth of the Klamath River so as to include the Klamath Indians.

(c) The report of Superintendent of Indian Affairs, California, B.C. Whiting, for 1871 state: "I would therefore respectfully recommend that the Hoopa Reservation be so extended as to take the [Klamath] river and the land for 3 miles back upon both sides to the Pacific Ocean, and thereby include the Klamaths, without requiring any to remove, other than those who may prefer to live at Hoopa."

(d) A report of September 1, 1871 from D. H. Lowry, Indian Agent, Hoopa Valley reservation, states his belief that the some 2,500 Indians along the Klamath are well disposed towards the whites, deserving of assistance and come to the reservation for help in respect of crops, farming implements and otherwise, which he is unable to provide as he would like to, and which he recommends be provided. "I would also recommend that all the land slying along the Klamath River, from a point 2 miles above the mouth of the Trinity River, extending back to the summits of the mountains on either side, be annexed to the Hoopa reservation, and be declared a part of the same."

(e) The report of the Commissioner of Indian Affairs to the Secretary for 1872 states the recommendation of the Superintendent of Indian Affairs, Califor-

nia, that the Hoopa Valley Reservation be extended to include the Klamath Indians who lived adjacent to the reservation along the banks of the Klamath and formerly belonged to the abandoned Klamath River Reservation.

(f) In 1885 Special Agent Paris H. Folsom conducted an investigation of apprehended troubles between whites and the approximately 200 Klamath Indians in 14 villages on the banks of the Klamath River between the Klamath River Reservation and the Hoopa Valley Reservation. He recommended that a 2-mile wide tract of land centering on the river between the two reservations be set aside for the sole use and possession of those Indians, and that the lands then be given in trust to the Indians. The Commissioner attached this report to his report to the Secretary for 1885, saying that he would make

suitable recommendations for protection of the Indians in respect of their lands.

50. At the same time as these recommendations that a reservation be created along the Klamath, a movement was going on in Congress to open the lands of the Klamath River Reservation, as an abandoned reservation, to public entry and sale. The bills in Congress for this purpose, introduced by 1879 on, were steadily opposed by the Department of the Interior, which maintained that the Klamath River Reservation was not abandoned, was still in a state of reservation and that the homes of its Indians needed protection. The Department conditioned its willingness to agree to publish sale on the bills being amended to protect the Indians by providing for the allotment of land to them in severalty, before public sale of the remaining lands.

51. The first bill for the public entry and sale of the Klamath River Reservation, in 1879, provided that the Klamath River Reservation "is hereby abolished" and directed the Secretary of the Interior to have the land surveyed and opened to homestead, pre-emption entry and sale, "the same as other lands." S. Res. 34, 46th Cong., 1s Sess. (1879); 9 Cong. Rec. 1651 (1879).

52. No action having been taken on this bill, another, with the same provisions, was next introduced in 1880. 10 Cong. Rec. 286 (1880); H.R. 3454, 46th Cong., 2d Sess. (1880). The House committee report on this bill declared that the establishment of the reservation in 1855 had been a mistake and an injustice, because it blocked access of the adjoining lands to the river; that the reservation had been abandoned after the flood of

1861, and that the Indians had been removed to Smith River and then to the Hoopa Valley Reservation "where they were permanently located." The report set out a letter from the Office of Indian Affairs in 1874, signed by Commissioner Shuter, stating that the flood in 1861 had rendered the reservation worthless and that the reservation "has not been used for any public purposes since the freshet referred to and the department has no claim upon it." H. R. Rep. No. 1354, supra, 2.

The report continued that white settlers had in reliance on this letter improved their homes and buildings but that nevertheless at the instance of the Department of the Interior in 1877 the War Department forced the settlers to leave the reservation; that the Indians now there did not belong there but belonged on

the Hoopa Valley Reservation; that the area was extremely fertile and timbered and suitable for wine and fruit and timber-cutting, none of which could be developed because the reservation blocked access to the natural highway, the navigable Klamath River.

The report concluded (H.R. Rep. No. 1354, supra, 5):

It is the opinion of the committee, after careful investigation, that the government can have no use for these lands as an Indian reservation. The Hoopah Reservation, to which the Indians were removed and settled upon after the freshet in 1862, is located but 15 miles from the abandoned Klamath Reservation, and is capable of sustaining many thousands more of the Indians than are now located upon it. Why, then, should these lands in question be kept from settlement and improvement by white citizens who are eager to expend their labor and means in the development of their resources?

If there be no use for his abandoned reserve for the purposes originally intended, the committee can see no valid

reason why it should not be restored to public domain, and again made free for the access of labor and capital of white settlers seeking homes and fields for their energy and enterprise. Entertaining this view, after an impartial and careful consideration of all the evidence submitted, they are constrained to report in favor of the measure, and they therefore return the bill to the House, with the recommendation that it pass.

The report did not mention (as appeared in a report in the next session) that the Indian Office opposed the bill. H. R. Rep. No. 1148, 47th Cong., 1st Sess. 1 (1882).

The bill as reported was recommitted and no further action was taken on it. 10 Cong. Rec. 3126 (1880).

53. An identical bill was introduced in the following Congress (H.R. 60, 47th Cong., 1st Sess. (1881)) and upon reference to the Office of Indian Affairs was there approved with an amendment

providing for allotments to the Indians.

13 Cong. Rec. 90, 3414 (1882).

Commissioner Hirma Price's letter of comment on the bill, dated March 24, 1882, stated (H.R. Rep. No. 1148, 47th Cong., 1st Sess. 2 (1882)):

To return to the consideration of the bill: The lands embraced within the said reservation are not needed (as a reservation) for Indian purposes, but that the Indians residing thereon should be protected in the peaceful occupancy and enjoyment of their homes, to which they have become much attached, and where they have gained a livelihood unaided by the government for more than a quarter of a century, is certainly beyond dispute.

In order to effect this, I have to recommend that a further provision be added to the bill, at the end thereof, in substance as follows:

That before any of the foregoing provisions except that authorizing and directing the Secretary of the Interior to have the lands embraced in said reservation surveyed, shall be held and deemed to be in effect, there shall be selected and allotted to each Indian belonging to and residing upon said

reservation, lands within the limits of said reservation as follows:

To each head of family one quarter-section.

To each single person over eighteen year of age, one-eight of a section.

To each person under eighteen years of age, one-sixteenth of a section."

* * * * *

With the amendment above proposed, I see no objection to the passage of the bill. * * *

The committee report also contained a letter dated September 26, 1981 from Lt. Gordon Winslow of the Army, the Acting Indian Agent. Lt. Winslow stated that a census of the Indians just taken under military auspices reflected the presence of 213 Indians on the Klamath River Reservation. The census, he said, was "as nearly accurate as it can well be": his earlier report, in the same year, of 115 Indians was, he said, based on information from civilians "who are, I believe, somewhat inclined to lessen the number,

thinking doubtlessly that the smaller the number the greater the likelihood of its being thrown open to settlers."

The committee approved the bill with the amendment suggested by the Commissioner. No action, however, was taken by the House.

54. The next three bills, in 1883 and 1884, in the 48th Congress, acceded to the desires of the Interior Department. The bills assumed that the Klamath River Reservation was in existence and provided that allotments to the Indians should be made before the land was to be opened to white settlement as public land. H.R. 112, 48th Cong., 1st Sess. (1883); H.R. 7505, 48th Cong., 1st Sess. (1884), reported by the Committee on Indian Affairs as a substitute for H.R. 112; S. 813, 48th Cong., 1st Sess. (1883). These bills "abolished" the Klamath River Reservation

and directed that the lands embraced therein be surveyed and "made subject to homestead and pre-emption entry and sale the same as other public lands," with, however, a provision that before this was done there should be allotted land in stated amounts to the Indians belonging to and residing within the reservation.

55. Perhaps encouraged by the prospects of these bills, the Indian Bureau in 1883 began the work of allotment of Klamath River Reservation land, and selections were made by the Indians under the supervision of the Agent at Hoopa Valley. (The allotments fell through, however, when the surveys were found to be erroneous and fraudulent.)

56. None of the three mentioned bills (finding 54, supra was enacted. The report of the Commissioner of Indian

Affairs for 1885 says that it is "presumed that they were not reached in the regular course of business before adjournment."

The Commissioner added that:

"It is my intention to ask at an early day for legislation suitable to the wants of these Indians. They do not need all the lands at present reserved for their use, but they should be permanently settled, either individually or in small communities, and their lands secured to them by patent before any portion of their reservation is restored to the public domain.

57. On December 21, 1885 identical bills were introduced in the House, repeating the provisions of the three bills introduced in 1883 and 1884 (finding 54, supra). H.R. 158 and 165, 49th Cong., 1st Sess. (1885); 17 Cong.Rec. 370 (1885). No action was taken.

58. The years 1886 through 1889 saw no further bills for the sale of the Klamath River Reservation. Other significant developments, however,

occurred. Congress in 1887 passed an act providing generally for allotments of reservation land to Indians in severalty and the federal courts in 1888 ruled that the Klamath River Reservation did not have the legal status of an Indian reservation. Both developments are discussed in the immediately following findings.

59. The General Allotment Act of February 8, 1887 (24 Stat. 388) authorized the President to survey the lands of any Indian reservation created by treaty, statute or executive order and "to allot the lands in said reservation in severalty to any Indian located thereon." As soon amended by the Act of February 23, 1891 (26 Stat. 794) each Indian was to receive $1/8$ of a section (or 80 acres), the acreage to be doubled in size where the land was valuable only for grazing.

60. A case now arose of a commercial

fisherman named Hume who employed Indians to fish in the Klamath River within the boundaries of the Klamath River Reservation, and paid them with goods. The Department of Interior, desirous of protecting the reservation from such intrusions, caused the prosecution of a libel against his goods, for unlicensed trading in an "Indian reservation" or in "Indian country" in violation R.S. §2133, as amended July 31, 1882 (22 Stat. 179).

61. The Government's position was set out in detail in a letter of April 4, 1888 from Commissioner J.D.C. Atkins, which the United States Attorney presented to the district court on the hearing of the case. On a review of the history of the reservation, the Commissioner concluded that the Klamath River Reservation was regarded by the Department "as in a state

of Indian reservation" under the supervision of the Hoopa Valley Indian Agency.

Commissioner Atkins quoted from a letter from Superintendent Wiley of January 19, 1865, in connection with the location of the reservation at Hoopa Valley, that it was his "present purpose" to locate the Indians then at Smith River "upon the land formerly occupied as an Indian reservation upon the Klamath River, and which was abandoned in 1861, but is still reserved by the Government. The Hoopa Reservation will either be extended so as to cover this point, or it will be kept up as a station attached to that reservation and under the control of the same agent." Commissioner Atkins said that this letter showed that the plan of the Superintendent was to "annex the Old Klamath River Reservation (with which we are now especially concerned), to the new

Hoopa Valley Reservation." "I find," he concluded, "that this office warmly commended and approved the superintendent's course."

The Commissioner also quoted from letters from former Commissioners to the Secretary of August 14, 1877 and March 8, 1878, stating that when the Agency at the Klamath River Reservation moved to the Smith River Indian Reserve and the Indians (with the exception of one band) refused to leave (finding 8, supra), "it was not deemed advisable to recommend its [the reservation's] restoration to the public domain," and that "In view of these facts the reservation should, in my opinion, be preserved intact until some measures are devised for the permanent settlement of these Indians."

62. The district court on June 7, 1888, nevertheless dismissed the libel,

with an opinion holding that the Klamath River Reservation did not have the legal status of an Indian reservation, although, the court also held, the reservation was not open to public entry as public lands. The act of 1864 (finding 10, supra), the court held, had authorized the creation of four reservations; lands of old reservations not set apart within the four new reservations were under section 3 of the act not subject to the operation of the general land laws but reverted to the control of the Secretary of the Interior, for survey and sale at auction. The President, the court continued, had in various orders and modifications of orders exhausted his authority under the act by the creation of four reservations--The Tule River Reservation, the Hoopa Valley Reservation (as to which, the court said, a suggestion that it include the Klamath

River Reservation was not adopted), the Round Valley reservation and Reserves for Mission Indians-- and the Klamath River Reservation not having been included in any of the four reservations, the lands of that reservation were under section 3 of the act relinquished "for the purposes of Indian reservations," and came into the possession of the United States for the survey and sale provided for by that section. United States v. Forty-Eight Pounds of Rising Star Tea etc., 35 Fed. 403 (D.C.N.D. Calif. 1888).

63. The Secretary of the Interior requested that the Attorney General appeal the foregoing decision of the district court. In the Secretary's annual report for 1888 he said that in order to protect the Indian, authority ought at once be given, during the pendency of the appeal

"to set apart these lands as a reservation and thus remove all doubt."

64. On January 14, 1889, while the Hume case was pending on appeal, another bill was introduced in the House to open the Klamath River Reservation to public sale. H.R. 12104, 50th Cong., 2d Sess. (1889); 20 Cong. Rec. 756 (1889). Perhaps in response to the district court's ruling that the reservation had lost its status as an Indian reservation but had not become public land, rather having come into the possession of the United States, under the act of 1864, for the purposes of survey and sale, the bill provided that the reservation should be regarded for the purposes of the act as in a state of reservation within the meaning of the General Allotment Act of 1887 (finding 59, supra), and lands should be allotted to the Indians pursuant to that act, before

public sale took place. Further, that surplus lands after allotment, despite the contrary provisions of the General Allotment Act, would be deemed to be and held as public lands subject to the laws for the disposition of public lands.

No action was taken on the bill.

65. (a) Shortly thereafter, and while the Hume case was still pending appeal, the Senate by resolution of February 13, 1889 (20 Cong. Rec. 1889) directed that the Secretary of the Interior inform it as to what proceedings had been taken for the survey and sale of the Klamath Indian Reservation, presumably the survey and sale which the district court had held was now the province of the Secretary. The Secretary's response, in the form of letters from the Commissioners of Indian Affairs and the Land Office, was that no such proceedings had been taken,

because the lands had been in a state of reservation continuously since 1864.

(b) The letter from Commissioner of Indian Affairs John H. Oberly, dated February 18, 1889, stated:

In response to said resolution, I have to state that I am unable to discover from the records or correspondence of this office that any proceedings were ever had or contemplated by this Department for the survey and sale of said reservation under the provisions of the act aforesaid: on the contrary, it appears to have been the declared purpose and intention of the superintendent of Indian affairs for California, who was charged with the selection of the four reservation to be retained under said act, either to extend the Hoopa Valley Reservation (one of the reservations selected under the act), so as to include the Klamath River Reservation, or else keep it as a separate independent reservation, with a station or subagency there, to be under control of the agent at the Hoopa Valley Reservation, and the lands have been held in a state of reservation from that day to this.

(c) The letter from the Commissioner of the Land Office, dated February 28, 1889, advised that surveys of the Klamath River Reservation were made in 1882; that in a letter of April 4, 1883 to the Secretary, the Commissioner of Indian Affairs "recommended that allotments be made to the Klamath River Indians based upon the public surveys herein stated, and that the rest of the reservation be restored to the public domain"; that attempts were made in 1884 by the Indian Office to make allotments using the surveys made but that on examination the surveys were found to be irregular and fraudulent and the allotments made were recommended for cancellation by the Indian Commissioner; and, finally, that resurveys had been made and were still under examination.

66. On April 1, 1889, the circuit court affirmed the decision of the district court in the Hume case, under the same title, in 38 Fed. 400 (C.C.N.D. Calif. 1889). The opinion of the circuit court was essentially the same as that of the district court (38 Fed. 400-1):

The president did thereafter [after the act of 1864] act from time to time, and he did set off four tracts in different parts of the state for the purposes provided for, and he did not include in any one of them, the "Klamath Indian Reservation" theretofore set apart. In setting apart these four reservations without including the Klamath reservation, he necessarily exercised his discretion, and, by implication at least, excluded them. As they were not retained by the future and further action of the president "for the purposes of Indian reservations," "under the provisions of the preceding sections of this act," the reservation, by the terms of the act itself, abolished or abrogated the prior reservation. This necessarily follows from the provision requiring these lands not embraced in the reservations made by the action

of the president under that act to be cut up into lots of suitable size and sold, as provided in the act.

67. In December 1889 and January 1890 identical bills introduced in the House and Senate provided, simply and without mention of allotments, that "all of the lands in what was the Klamath River Reservation" are "declared to be subject to settlement, entry, and purchase" under the land laws. H.R. 113, 51st Cong., 1st Sess. (1889); 21 Cong. Rec. 229 (1889); S. 2297, 51st Cong., 1st Sess. (1890); 21 Cong. Rec. 855 (1890).

The bills were opposed in a report by the Indian Office dated October 15, 1890 (described some months later in a letter of January 7, 1891 from Commissioner Morgan to the Secretary), recommending that the bill be amended to provide for allotments to the Indians under the General Allotment Act, the surplus

unallotted lands to be restored to the public domain and the funds from the disposal of the lands to be put to the credit of the Klamath River Indians. With such a provision for allotments, the Indian Office said, it would not object to the sale of the surplus lands. Without it, the Office would "strenuously oppose" sale of the land:

In no event should the bill under consideration, or any other like measure be adopted unless provision is made for the allotment of lands in severalty to the Indians and some means provided to enable them to get a start in agricultural pursuits and for the education of their children. With such protection and assistance secured to them, this office would interpose no objection to the disposal of the surplus unallotted lands as provided in the bill under consideration. But it would feel bound to strenuously oppose any measure looking to the opening of the lands of said reservation to settlement or sale that did not secure to the Indians permanent title to their homes, which can best be done by allotting lands in severalty to

them as hereinbefore recommended.

68. Amendment of the bill as urged by the Indian Office was emphatically rejected by the House Committee on Indian Affairs. On April 1, 1890 the Committee reported H.R. 113, still providing for public sale, but with an amendment affirmatively rejecting any allotments on the Klamath River Reservation. The amendment provided that the Indians on the Klamath River Reservation be removed to the Hoopa Valley Reservation and there allotted, and that the proceeds from the sale of the lands be a fund to be used by the Secretary of the Interior for the "removal, maintenance, and education" of the Indians residing on the lands and their children. (Emphasis added; H.R. Rep. No. 1176, 51st Cong., 1st Sess. 2 (1890).) In this form the bill passed in the House, in September, 1890 (21 Cong. Rec. 10702 (1890)) and

in the Senate was referred to committee (21 Cong. Rec. 10740)). The Senate took no action, either on the bill as first introduced or as it passed in the House.

69. The passage of a bill so flatly rejecting allotment and providing for public sale spurred the Department of the Interior to action. On December 23, 1890 the Secretary suggested to the Commissioner of Indian Affairs that he "consider the question whether a reservation should not be made the Klamath River Indians, * * * and if so, you will please prepare the proper description and orders for the purpose."

70. Commissioner Morgan responded promptly, on January 7, 1891, and at length. Reviewing the establishment of reservations in California under the act of 1864 (finding 10, supra), he raised a question as to whether four reservations

were in fact established under that act. The Smith River Reservation, he said, was intended to be only temporary and the Tule River Reservation was simply leased and not set apart under the act. His implication was that, contrary to the premise of the decision in the Hume case (findings 62, 66, supra), the President had not exhausted his authority under the act of 1864 to create four reservations in California.

He also discussed the proposed legislation to sell publicly the lands of the Klamath River Reservation, and the opposition of the Department of the Interior unless the bill were amended to provide first for allotment of land thereon to the Indians in severalty, and urged further efforts to cause the enactment of the legislation favored by the Department, i.e., for allotment of lands

to the Indians resident there and sale of the surplus lands, with the proceeds to be used for the benefit of the Indians. As to non-reservation Klamath Indians, resident between the Hoopa Valley Reservation and the Klamath River Reservation, he noted and restated Agent Folsom's recommendation (finding 49(f), supra) that the connecting strip of land between the two reservations be set aside for Indian use.

He concluded by saying that he would prepare whatever papers were requested, but that he was not prepared to recommend the establishment of a new reservation unless the Klamath's reservation was endangered, in which case the Hoopa Valley Reservation should be extended along the Klamath to the ocean:

* * * If it shall be found that by the decision of the courts or through the failure of Congress to act, the Klamaths are likely to loose [sic] the reservation established in 1855,

it may become expedient to extend the Hoopa Valley reservation so as to include lands on both sides of the Klamath River, two miles in width on each side, from that reservation to the mouth of the river.

71. The Secretary thereupon sought the opinion of Assistant Attorney General George H. Shields, assigned to the Department of the Interior. Mr. Shields' opinion, dated January 20, 1891, responded as well to inquiries put to him earlier. He considered three questions: (1) "whether the Department is authorized to cause the removal of intruders from said [Klamath River] reservation"; (2) "whether the lands within the limits of said reservation can be allotted to the Indians living upon them, as reservation Indians, or under the legislation providing for allotments to non-reservation Indians"; and (3) the Secretary's immediate question, "whether the Hoopa Valley

Reservation may not 'be legally extended so as to cover the ground of the Klamath Reservation.'"

The opinion described the creation of the various reservations under the act of 1864, particularly pointing out that reservations had been created of contiguous parcels and by orders and successive orders revoking and amending earlier orders and setting aside substituted lands as reservations, and continued:

Three conclusions inevitably flow * * *: 1, that no formal order of the President retaining an existing reservation was deemed necessary, but its [the Tule River Reservation] actual retention by the officers of the Indian Bureau was sufficient to constitute it one of the four authorized reservations; 2, that contiguity was not an essential, but a reservation might be composed of several noncontiguous parcels of land; and, 3, that the Executive authority, in that respect, was not exhausted when once exercised in the setting apart of "four tracts" or parcels of land, as reservations; but that

discretion continued, and yet exists, to change, add to, diminish or abolish reservations and establish others, as may seem most promotive of the public interests.

In relation to the Klamath River reservation, as in that of the Round Valley, no formal or written order appears to have issued for its retention. In both of these instances the Indian office retained possession and control of the former reservations, making no change in their condition, status or management, further than that they passed under control of one State Superintendent as required by the act of 1864. The Indians remained in the occupation of both of these reservations, and yet so occupy them alone, except as far as that occupation may have been intruded upon by individual white men, under color of claims. Congress has made annual appropriations for support of the Indians on the Round Valley reservations, but none for those on Klamath, and for the all sufficient reason that the latter are self-supporting and have never cost the government a dollar in this respect.

Mr. Shields then turned to a detailed statement of the "special circumstances" showing, he believed, that the Department

had retained the Klamath River Reservation under the act and that it was a part of the Hoopa Valley Reservation.

Among the circumstances he relied upon were the following:

(a) The letter of January 19, 1865 from Superintendent Wiley to the Commissioner, stating that it was his intention to extend the Hoopa Valley Reservation so as to include the Klamath River Reservation "or it will be kept up as a station attached to that reservation and under control of the same agent" (finding 61, supra). This disposition, Mr. Shields noted, was approved by the Commissioner in his annual report for 1865.

(b) The Commissioner's letters of August 14, 1877 and March 8, 1878 to the Secretary, already quoted in finding 61, supra.

(c) The statement by the Secretary in his annual report for 1888 (at p. 76) that:

Indians have continued to reside on the Klamath River lands, and those lands have been and are treated as in a state of reservation for Indian purposes, the jurisdiction is under the U.S. Indian agent for the Hoopa Valley agency.

The rejection by the Commissioner in 1883 of an offer to lease the salmon fisheries of the Klamath River and to cut timber on its lands, with a statement that "The reservation is still in a state of Indian reservation, and must so remain, uninterfered with, until otherwise ordered by competent authority."

(e) The circumstances of the approval by the Secretary, in 1883, of a recommendation that allotments be made to the Indians of the Klamath River Reservation (see findings 55, 65(c), supra) and the circumstance that in the same year the

Secretary, in an appeal in a Land Office proceeding involving the lands were since the act of 1864 regarded as in reservation, noting that allotments had been made and that when the selections were all made he would consider the question of restoring the remainder to the public domain. The allotments which had been made were abandoned when the underlying survey was found to be erroneous and fraudulent. Another survey was made in 1886 and meanwhile land officers were instructed to permit no entries or filings on Indian lands.

Mr. Shields stressed that the Mission Reservation, created under the same act as that under which the Hoopa Valley Reservation was created, was in accordance with orders of four Presidents composed of 19 different noncontiguous parcels.

On the basis of the foregoing data and considerations, Mr. Shields gave his opinion that the Klamath River Reservation was part of the Hoopa Valley Reservation, one of the four reservations authorized by the act of 1864, and that intruders could therefore be removed. It followed, he said, that the Indians thereof could be allotted under the General Allotment Act of February 8, 1887 (finding 59, supra).

Mr. Shields then turned to the district court opinion in the Hume case, which he recognized to be contrary to his opinion, and a remedy for the defect the court had found in the status of the Klamath River Reservation. The opinion itself was distinguished as dictum; the decision was said to be correct for the reason that the Klamath was a navigable stream from which fishermen could not be excluded.

The principal reason underlying the district court's opinion was, in the view of the Assistant Attorney General, the absence of an executive order setting aside the reservation as part of the Hoopa Valley reservation, an omission which could easily be supplied by an order, which the Assistant Attorney General held would be lawful, extending the Hoopa Valley Reservation to cover the area of the Klamath River Reservation:

Judge Hoffman concedes that the lands in question are yet in reservation, though not for Indian purposes; that they constitute a reservation in fact, but not in law; and the principal reason why the legality is questioned appears to be because there was no formal executive order setting apart or retaining it as part of the Hoopa Valley reservation. This difficulty may yet be removed by the President issuing a formal order, out of abundant caution, setting apart the Klamath river reservation, under the act of 1864, as part of the Hoopa Valley reservation, or extending the lines of the latter

reservation so as to include, within its boundaries, the land covered by the former reservation, and the intermediate lands, if the title to the last be yet in the United States. Such an order would be in accordance with the precedents in relation to the Tule river Round Valley, and Mission reservations, the legality of which, as herein shown, has been repeatedly recognized by the legislative and executive branches of the government. I am therefore of the opinion that the Hoopa Valley reservation "may be legally extended, so as to cover the ground of the Klamath reservation."

72. On January 21, 1891, the day following Assistant Attorney General Shields' opinion to the Secretary, the Secretary requested the Commissioner to prepare the necessary orders for extension of the Hoopa Valley Reservation.

73. The response was delayed until May 5, 1891; Acting Commissioner Belt explained that the reason for the delay was that "a bill for the disposition of the Klamath reservation was pending, which

it was thought might become a law with amendments satisfactory to the Department." (This was presumably a reference to possible Senate action on the bill passed in the House in September 1890 in the 51st Congress (finding 68, supra).) The response transmitted to the Secretary a draft of an executive order which provided for extending the Hoopa Valley Reservation to include a tract of land 1 mile in width on each side of the Klamath River from the present limits of the reservation to the Pacific Ocean. Acting Commissioner Belt implied that he had adopted the suggestion of the Assistant Attorney General--that an extension include the land between the two reservations--because of Agent Folsom's report on the Indians of the intermediate strip (finding 49(f), supra).

74. On October 12, 1981, Secretary Noble transmitted to the President, requesting his signature, a draft of the executive order extending the Hoopa Valley Reservation. Among the enclosures was Assistant Attorney General Shields' opinion (finding 71, supra), which, the Secretary said, contained a history of the reservation and "the reason for the issuance of an order in the premises."

75. Four days later, on October 16, 1891, President Harrison signed the executive order; its terms, set out in finding 33, supra, extended the boundaries of the Hoopa Valley Reservation and the Connecting Strip between the two reservations.

76. Congressional proponents of public sale of the Klamath River Reservation did not cease their efforts on the issuance of the executive order

incorporating the Klamath River Reservation into the Hoopa Valley Reservation. Either unaware of or indifferent to the executive order, they continued to press for the public sale of the lands of the Klamath River Reservation and, in the House, even to forbid allotment to the Indians thereof.

77. On January 5, 1892, 3 months after the executive order was signed on October 16, 1891 (finding 75, supra), H.R. 38 was introduced in the House, declaring that all of the lands embraced in "what was the Klamath River Reservation" were to be subject to settlement, entry and purchase, with a proviso that the proceeds of sale should be a fund used by the Secretary for the "removal, maintenance and education" of the resident Indians. H.R. 38, 52d Cong., 1st Sess. (1892) 23 Cong. rec. 125 (1892).

The House committee reported the bill with only an amendment changing the last-quoted phrase to read "removal, maintenance or education." The committee report took the strong position that the reservation had been abandoned, as had been held by the federal courts, and that it was useless to allot any of its lands to the resident Indians, estimated by the report to be from 50 to 100 in number, because the Indians were "semicivilized, disinclined to labor, and have no conception of land values or desire to cultivate the soil"; that even if it were wise to allot lands to such Indians, these lands were unsuitable, whereas the nearby Hoopa Valley Reservation was adopted for allotments; and finally that while the Indians had not been cared for by the Government since 1861-62, the Government might hereafter desire to do, and for this

purpose the proceeds of the sale of the lands should be a fund, for their removal, maintenance and education. H.R. Rep. No. 161, 52d Cong., 1st Sess. (1892). No mention was made, in the report or in the brief debate in the House (see 23 Cong. Rec. 1599 (1892)), of any extension of the boundaries of the Hoopa Valley Reservation to include the Klamath River Reservation, of the Executive Order of October 16, 1891 effecting that extension, or of any recent change in the status of the Klamath River Reservation.

The bill as reported passed the House (23 Cong. Rec. 1599 (1892)) but in the Senate was stricken and another version substituted so as to delete the reference to removal of the Indians and to provide that before public sale, the lands should be allotted under the General Allotment Act of 1887 as amended. In this, the

Senate Committee "had the recommendation of the Interior Department to draw the bill as it is reported." 23 Cong. Rec. 3918 (1892). As so amended the bill passed both House and Senate and became the Act of June 17, 1892, 27 Stat. 52. Neither the brief debate nor the two conference reports contain any mention of an extension of the boundaries of the Hoopa Valley Reservation, the 1891 executive order or of any recent change in the status of the Klamath River Reservation. 23 Cong. Rec. 4225, 7771 (1892); 23 Cong. Rec. 3918-9 (1892). There was a reference in the Senate debate to a nearby reservation, doubtless the Hoopa Valley Reservation, "where these Indians [of the Klamath River Reservation] can go if they want to." 23 Cong. Rec. 3918, supra.

The proviso for allotments reads as follows (27 Stat. 52):

Provided, That any Indian now located upon said reservation may, at any time within one year from the passage of this act, apply to the Secretary of the Interior for an allotment of land for himself and, if the head of a family, for the members of his family, under the provisions of the act of February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," and, if found entitled thereto, shall have the same allotted as provided in said act or any act amendatory thereof:

With elimination of the word "removal," the last proviso, with respect to the proceeds of public sale, read as follows 27 Stat. 53):

Provided further, That the proceeds arising from the sale of said lands shall constitute a fund to be used under the direction of the Secretary of the Interior for the maintenance and education of the Indians now residing on said lands and their children.

Allotments on the Hoopa Valley Reservation

78. (a) At the time of the issuance of the Executive Order of October 16, 1891 extending the boundaries of the Hoopa Valley Reservation to include the Klamath River Reservation and the enactment of the Act of June 17, 1892 for allotment and public sale of the lands of the Klamath River Reservation, the situation as to allotments on the now three parts of the Hoopa Valley Reservation was as follows:

(b) On November 29, 1887, within the year of the enactment of the General Allotment Act of 1887 (finding 59, supra), executive authority had been given for surveys preliminary to allotments in the Hoopa Valley Reservation, then consisting of the Square only. The survey was under way in 1889 and allotments were made temporarily until the survey could be completed.

(c) Preliminary work for allotments on the Klamath River Reservation had been begun in 1883 and fallen through (findings 55, 65(c) and 71, supra). Presidential authorization would be unnecessary for such allotments, for the act of 1892 (preceding finding) had supplied the requisite authority by its direction that allotments on those lands take place in accordance with the General Allotment Act.

(d) Presidential authority would be necessary for allotments on the Connecting Strip, land which had never before had reservation status. Such authority was soon supplied, and work on allotments on all three parts of the enlarged reservation continued and was undertaken; it was executive policy to make the allotments on the reservation permitted by law (and in the case of the tract constituting the

former Klamath River Reservation it was also the Congressional mandate).

79. The instructions to the allotting agents in the field, the accompanying departmental and Presidential correspondence, and the allotments made are the subjects of the following findings.

80. Allotments on the former Klamath River Reservation and the Connecting Strip were first brought up, after the enactment of the Act of June 17, 1892, by instructions proposed to be sent to the allotment agent. Such instructions were submitted for approval by Acting Commissioner Belt to Secretary Noble on September 12, 1892. The instructions are quoted in the finding next following, at the point of time when they were approved and dispatched.

On September 29, 1892 the Secretary reported to the President and requested

authority for allotments on the Connecting Strip, as follows:

By Executive Order of October 16, 1891, the limits of the Hoopa Valley Indian Reservation, in California, were extended as to include a tract of country one mile in width on each side of the Klamath River and extending from the present limits of the said reservation to the to the Pacific Ocean.

By the Act of June 17, 1892 (Public No. 84), the lands in what was the Klamath River Reservation, in California, comprising a strip of country one mile in width on each side of the Klamath River commencing at the Pacific Ocean and extending up said river a distance of twenty miles, may be allotted and reserved as therein provided.

It is reported by the Commissioner of Indian Affairs that not more than forty allotments will be claimed by Indians who are residents on the original Klamath River Reservation, but that four hundred and seventy-five Indians reside on the strip of country between the two original reservations and on this strip there are several so-called Indian villages.

The Commissioner is of opinion that when the lands are allotted under the Act of June 17, 1892, allotments should also

be made to the Indians on the strip.

Concurring in the views of the Commissioner, I have the honor to recommend that authority be granted for allotments in severalty under the Act of February 8, 1887, as amended by the Act of February 28, 1891, to the Indians on the strip of country added to the Hoopa Valley Indian Reservation in California by Executive Order of October 16, 1891, except that portion embraced within the original Klamath Reservation, on which allotments are authorized by the act referred to, and for the necessary surveys, and that your authority be endorsed hereon.

President Harrison approved, on September 30, 1892, by signing a memorandum presented by the secretary reading "Relative to allotments to Indians located on strip of country added to Hoopa Valley Reservation, California, and for necessary surveys of same."

On October 8, 1892 the Secretary transmitted to the Commissioner the President's authorization, appointed

Ambrose H. Hill "to make these allotments and also the allotments on the original Klamath River Reservation" and approved the draft instructions submitted to him on September 23 (supra), upon which the Commissioner sent the instructions to Mr. Hill.

81. The letter of instructions to Special Agent Hill of September 23, 1892, first dealt with the allotment of the lands of what was the Klamath River Reservation. The 1892 lands of what was the Klamath River Reservation. The 1892 act was described; the agent was to advise the Indians of their opportunity and have them sign an application. The letter recognized explicitly the applicability to allotments of both the General Allotment Act and the act of 1892, both generally and in the following paragraph:

The allotments are to
be made under the Act of

February 8, 1887, "or any act amendatory thereto." Said Act has been amended by the Act of February 18, 1891. Under the former act as amended by the latter, each and every Indian located on the reservation, (Original Klamath River) is entitled to 80 acres of agricultural land, or a double quantity of grazing land. No Indian is entitled to an allotment unless he was located on said reservation on the 17th of June, 1892.

The letter of instructions then gave a series of detailed procedural rules for the making of allotments, and went on to the subject of allotments on the Connecting Strip.

82. In opening the discussion of the Connecting Strip the instructions mentioned the extension of limits of the Hoopa Valley Reservation by executive order of the prior year to include not only the "original Klamath River Reservation" but also the "connecting strip" of 2 miles centered on the river. Allotments

to Indians on the Connecting Strip were, it was noted, not authorized by the Act of June 17, 1892, but were to be made by authority of the President under the General Allotment Act, the Act of February 8, 1887, as amended February 28, 1891:

"By an Executive Order, dated October 16, 1891, the limits of the Hoopa Valley reservation were extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the limits of the Hoopa Valley reservation, as then existing, to the Pacific Ocean, Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United State are hereby excluded from the reservation as hereby extended"--This extension of the Hoopa Valley reservation included the original Klamath River reservation, the subject of the foregoing instructions and of the Act of June 17, 1892, and also a strip of country 1 mile in width on each side of the river, between the two reservations. This connecting strip is not included in the provisions of the Act, but the President has authorized

allotments to be made to the Indians located thereon. As soon, therefore, as you complete the allotments on the original Klamath River Reservation you will proceed to make those on the connecting tract. Agent Beers reports that these Indians number some 475. Allotments should be made under the foregoing instructions except that as they are not required to apply for allotments, you need not have them sign an application. You will observe that tracts to which valid rights have attached are excepted from the reservation and are therefore not subject to allotment. I enclose for information list of entries within the strip.

The "foregoing instructions," mentioned in the third-from-last quoted sentence, were a reference to the detailed procedural instructions earlier given for the making of allotments on the former Klamath River Reservation.

83. Hill proceeded to the reservation and on February 13, 1893 he submitted a schedule, approved on August 11, 1893, of 161 allotments of "lands

allotted to Indians located on the Original Klamath River Reservation." The allotments varied widely in size, from 8 to 160 acres, averaging approximately 60 acres each, to a total of 9,762 acres. Of the 161 allottees, two are known to have been Indians of Hoopa blood who had resided on the lands on the original Klamath River Reservation for many years prior to receiving their allotments.

84. In February, 1894, Charles W. Turpin succeeded Hill and undertook the completion of allotments on the Connecting Strip.

The instructions to Turpin, from Acting Commissioner Frank C. Armstrong, dated February 21, 1894, in relevant part read as follows:

Having been assigned to the duty of allotting lands to the Indians of the Hoopa Valley Reservation in California, the following instructions are given for your guidance.

By an Executive Order, dated October 16, 1891, the limits of the Hoopa Valley Reservation were extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the limits of the Hoopa Valley Reservation, as then existing, to the Pacific Ocean, "Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended." This extension of the Hoopa Valley Reservation included the original Klamath River Reservation, (which extended up the Klamath River one mile in width on each side for a distance of twenty miles) and also a strip of country one mile in width on each side of the river between the Klamath River and the Hoopa Valley Reservations.

The allotments on the Klamath River Reservation have all been made and approved.

On the connecting strip Special Agent Hill has made 246 allotments and submitted duplicate schedules thereof to this office.

* * * * *

Your first duty will be to complete the work of making allotments on this connecting strip, of which Special Agent

Hill reports that some 12 miles, on which are located about 125 Indians, remains to be allotted.

Allotments on this strip were authorized by the President September 30, 1892. They are to be made under the Act of February 8, 1887, as amended by the act of February 28, 1891, by which every Indian located on the reservation is entitled to 80 acres of agricultural or a double quantity of grazing land. Special Agent Hill however found it impracticable in very many cases to give the Indians, or to induce them to take, anywhere near the quantity of land allowed by the act. You will endeavor to allot them the full quantity where practicable, and where not, give them as much as they desire within the limit--much of the land is understood to be of no value to them.

* * * * *

3. Selection for orphans will be made by yourself and the Agent in charge of the Hoopa Valley Agency.

* * * * *

5. The tracts given to each allottee should ordinarily be contiguous, but he may be allowed to select detached tracts if necessary, in order to give him a proper proportion of agricultural land, wood and water privileges. Forty acre tracts of agricultural land may be divided into fractional parts of 20, 10, 5, or 2½ acres if

necessary to secure to each family a due proportion of agricultural land.

6. Each Indian should be allowed to select his land so as to retain any improvements made by him....

7. A description of the tracts to which valid rights had attached at the date of the Executive Order of October 16, 1891, was forwarded to Special Agent Hill, March 14, 1893.

* * * * *

Further instructions will be given you in regard to the allotment on the original Hoopa Valley Reservation.

* * * * *

Upon receipt of these instructions you will proceed to the Hoopa Valley Agency and reservation for the purpose of making the allotments thereunder.

* * * * *

I enclose copy of the act of February 8, 1887, and also of act of February 28, 1891.

85. Hill completed the allotments on the Connecting Strip in the year of his appointment, 1894, with the submission of a schedule of 253 allotments.

The Hill schedule was approved on June 23, 1896, and the Turpin schedule

(with two exceptions) on June 27, 1898. The total of almost 500 allotments varied in size from 5 to 160 acres and averaged approximately 40 acres each.

Two of these allottees are known to have been of Hoopa blood. They had been residents of the Connecting Strip for some years.

86. Surveys for allotments on the Square, begun (finding 78(b), supra) when the reservation consisted only of the Square, were completed on February 21, 1894, and the Commissioner then recommended that the authority of the President, necessary under the General Allotment Act, be obtained for the making of allotments. Acting Secretary Hines on February 23, 1894, requested Presidential authorization "for the making of allotments on the Hoopa Valley Reservation" under the General Allotment Act, and the President having on

March 9, 1894 signed an order reading "Relating to the allotment of lands on the Hoopa Valley reservation, California," the authorization was on March 12, 1894 transmitted to the Commissioner, who transmitted instructions to Special Agent Turpin on December 18, 1894.

87. The instructions of December 18, 1894 to Special Agent Turpin, after reciting the President's authorization for allotment of lands, stated:

This reservation was established by the executive orders of November 16, 1855 and June 23, 1876 and embraces some 89,572 acres, the number of Indians located thereon being estimated at 475. The greater portion of the land is not susceptible of cultivation. In fact it is doubtful if there is over 3500 acres of arable land in the reservation.

Reference was made to a body of arable land located remotely on the reservation, not yet surveyed; a road to this land was under construction, Turpin was

to survey this land to make allotment of the lands already surveyed.

The instructions recognized that lands in the valley proper would be insufficient for full sized allotments to those who might be entitled, and it was suggested that 5 or 10 acres of the available valley land be allotted, each Indian being allowed to retain his improvements and that the allotments be filled out with lands "in other parts of the reservation":

With regard to the lands in the Hoopa Valley you will consult freely and fully with Capt. Dougherty, and endeavor to satisfactorily adjust the holdings of the Indians to the surveyed lines. The lands in this valley should be divided as equitably as possible among the Indians located thereon, each Indian's being allowed to retain his improvements. It is not expected that these lands can be allotted in full quantity, but those in possession may be given 5 or 10 acres, and more in cases where they have improved the same if it can be done without injustice to others. Capt. Dougherty is thoroughly familiar

with the situation and will doubtless cheerfully aid you in this work. As far as practicable the allottees should be allowed to fill out their allotments by taking the balance in other parts of the reservation.

In other respects you will be governed by the instructions given you February 21, 1884, for your guidance in making allotments on the addition to the Hoopa Valley Reservation.

88. In 1896, Turpin proposed about 395 partial allotments on the Square of small tracts of about 5 acres of agricultural land, most of them in the valley proper. Grazing and timber lands were not allotted, and the Commissioner reported that further surveys would be necessary before the allotments could be completed.

Years passed, however, and the schedule of allotments was not approved because "many of the selections were described by metes and bounds and further surveys were necessary."

A new survey was made in 1915, and

was approved in 1917.

89. On June 19, 1916, an ad hoc council of Indians convened to pass on the applications of Indians from off the reservation for enrollment on the reservation with a view to obtaining allotments, petitioned the Commissioner, urging that outsiders, and particularly Klamaths, not be recognized as having any rights to the lands of the reservation (by which they meant the Square), which they wanted kept for members of the Hoopa Tribe alone.

The directions of the Indian Office to convene the council are the subject of finding 102, infra, and the council's place in history of tribal organization is the subject of finding 110, infra. The letter is set out here, for its relevance to the subject of allotments:

We, the members of the Hoopa Indian Council, representing the tribes of Klamath, Redwood, and the other tribes

that come under the Hoopas, do hereby write a few lines in explanation of certain conditions existing on the Hoopa Reservation in regard to the allotments that are now pending. In the first place there are Indians living on the Reservation that we think have no tribal rights here, they having no Hoopa blood in their veins. And besides these there are a great many outside Indians that want to get land here. There are certain tribes that are regarded as having tribal rights on the Hoopa reservation. This we cannot understand. Take the Klamath for instance--they represent a different tribe, talk a different language, and have never associated with the Hoopas to amount to anything. As near as we can understand the Hoopa and Klamath River reservation were allotted twenty some odd years ago. The Klamath are to-day enjoying the rights of their allotments, own their land and homes. While the Hoopas have had their land resurveyed and now are waiting to receive their allotments and are still uncertain about our land, and still they say we are linked with the other tribes. Surely there must be a mistake somewhere. This we would like to have looked into and corrected. We as members of the Hoopa Indian Council, knowing the real conditions that exist on the

Hoopa Reservation, do hereby say that taking all things into consideration--the amount of land--the number of real Hoopa Indians, that members of the Hoopa tribe as an average are having a hard time to make a living on the land they are now working. And to crowd us still closer would be reducing some to poverty. This we do not wish to see, as we are looking forward to the future. To you therefore, the Commissioner of Indian affairs, we ask to do all in our power to have the Hoopa Reservation set aside for the members of the Hoopa tribe, that they may get enough land to make a living on. All we ask is to be given an equal chance.

90. On July 17, 1918, pursuant to the new survey (finding 88, supra) superintendent Mortsolf was instructed to make allotments in the Hoopa valley proper and in the grassland area of the Square known as Bald Hills. There were about 1600 acres of arable land in the valley and 2000 acres of grazing land in Bad Hills. (The rest was largely timberland, the source of the present controversy.)

On March 2, 1922, and July 25, 1923, other were approved 365 allotments in the valley and at Bald Hills, listed on an original and three supplementary schedules, designated A, B and C, submitted by Superintendent Mortsolf. The allotments were small, averaging 8 acres.

A. Mortsolf Schedule D of 38 allotments, submitted on December 10, 1921, and a Schedule E of three additional allotments, submitted on February 12, 1924, were not approved because they had not been surveyed.

There the matter rested for almost 10 years, until 1832.

91. On November 2, 1932, Commissioner Rhoads directed Special Allotting Agent Charles E. Roblin to proceed to the Hoopa Valley Agency to confer with Superintendent Boggess concerning the making of further allotments on the Square and a

general study of the allotment situation there.

Agent Roblin made a first report by letter of November 19, 1932 in which he concurred in a recommendation of the Forest Service that land covered by forest or heavy brush or otherwise rendered unusable for agricultural or grazing purposes should be retained as tribal land. Such lands, he wrote, constituted a "very large percentage" of the reservation lands; there remained for allotment only a "very limited area" of agricultural land and other land which might profitably be used by individuals, the majority of the suitable lands having been disposed of by the 365 allotments made in 1922 and 1923. These former allotments he described as "apparently provided for the Indians of the Hoopa Valley Reservation, California, who were then entitled to land in

allotment by reason of use and occupancy, under instruction theretofore issued."

92. Roblin dwelt in detail on the large number of possible claimants, estimating that 600 Indians of those of the Connecting Strip and the Square would probably seek allotments:

The Hoopa Agency census rolls for 1932 show the following numbers of persons:

Hoopa Valley (original Valley Reservation).....	561
Klamath River (original twenty mile strip from Pacific Ocean, along Klamath River).....	608
Lower Klamath (Connecting strip along Klamath River, between original Klamath River Reservation and original Hoopa Valley Reservation).....	373
Total	<u>1,542</u>

Of these persons it is probably that only those of the original Hoopa Valley Reservation and of the connecting strip will desire allotments on the Hoopa Valley Reservation. These total 934. The available record does disclose how many of these are without allotments but, as the original allotment rolls

covered only 365 allottees, and as a certain proportion of these are now deceased and so not now on the census rolls, a conservative estimate would indicate that at least 600 of those now on the rolls are unallotted.

93. Assistant Commissioner Scattergood acknowledged Roblin's report on December 13, 1932. Noting that on some reservations the Indians, rather than receiving allotments, had received assignments by which the occupant was permitted to live upon and improve a tract as if it were his own so long as he made beneficial use of the land, Scattergood requested Roblin's views on the advisability of making assignments rather than allotments on the Square.

Roblin responded by letter of January 12, 1933, in which he recommended that the persons named on Mortsolf's Schedules D and E (finding 90, supra) should have those tracts allotted to them, and that

claimants whose selections covered land which would not require supplemental surveys should have that land allotted to them, provided their "enrollment on the Hoopa Valley Agency rolls has been regular and they are entitled to allotment," but that the lands which would require supplemental surveys if allotted and certain other lands surveyed but selected by children born subsequent to a certain date should be as assigned rather than allotted. This letter was "read and approved" by Superintendent O. M. Boggess.

94. In his letter of December 13, 1932 Scattergood had also asked Roblin for details of the cases of 125 Indians whose claims to an allotment, Roblin had reported, were in doubt. Scattergood asked on what the claims were based and why their rights were considered doubtful.

Roblin replied, in his letter of

January 12, 1933 (a letter which as noted was read and approved by Superintendent Boggess) as follows:

In my report of November 19, 1932, (L-A, 50666032), I reported that selections had been filed by or on behalf of 125 persons whose right to allotment "is in doubt"; and the Office requests information as to the basis of these claims and "why the right to allotment is considered as in doubt". A check of the annual census reports for 1932 shows that all these claimants are carried on the rolls at Hoopa Valley Agency, either as "Hoopa" Indians, "Klamath River" Indians, or as "Lower Klamath" Indians. The Lower Klamath Indians are those living on or belonging with those who were allotted on the "Klamath River" reservation created November 16, 1855, extending for a width of one mile on each side of the Klamath River for a distance of twenty miles up from the mouth of that river. The unallotted portion of that reservation was returned to the public domain under authority of the Act of Congress approved June 17, 1902. The Hoopa Indians are those living on or belonging with the Indians of the "Hoopa Valley" reservation created August 21, 1864 and confirmed by Executive

Order of June 23, 1876 in compliance with the Act of Congress approved April 8, 1864. The Klamath River Indians are those living on or belonging with the Indians of the Addition to the Hoopa Valley Reservation created by Executive Order of October 16, 1891, which addition is a strip extending for a width of one mile on each side of the Klamath River for a distance of approximately twenty-seven miles down that river from the northern boundary of the original Hoopa Valley Reservation to join the original Klamath River reservation. This is generally known as the "connecting strip". See note, page 6.

Under date of July 8, 1930 (L-A, 32789-30), the Office advised the superintendent of the Hoopa Valley Agency that the Hoopa Valley Reservation "was created under the authority contained in the act of April 8, 1864 (13 Stats., 39-40), for the accommodation of the Indians of the State of California, and was intended to include both branches of the Klamath River tribe", and that the so-called connecting strip "is considered merely to be an addition to the Hoopa Valley Reservation."

The doubt as to the allotment rights of the 125 claimants mentioned seems to be very indefinite, and based largely on a desire of the Hoopa Indians to exclude the Klamath

River and Lower Klamath Indians from allotment on the original Hoopa Valley Reservation, and also on a desire of the Hoopa Valley Agency officials to limit as far as possible the number of additional allotments to be made. This list also includes most of those who have heretofore been allotted field or grazing allotments and are now asking for "house lots" or additional areas of one sort or another. Two of these have received patents in fee for their original allotments, have sold them, now find themselves without title to any land on the reservation in their own right, and are applying for house lots or other land for themselves. These should probably be denied.

The rights of some are questioned because they were not living on the reservation when allotments were made in 1917 and 1918, but have moved onto the reservation since to secure better school facilities or some other advantage.

However, all these applicants are on the Hoopa Valley Agency rolls and are carried on the annual census reports and as the Hoopa Valley Reservation was created as one of several reservations to be set apart for the "Indians of California", it is my opinion that the objection to the rights of these claimants, as a class, should be disregarded. In some few cases

the objections may be substantiated by an investigation which would result in striking the names from the official rolls; but these cases would be very few.

* * * * *

[p. 6] Note. Page 1. The statement made by me on page 1 of this letter as to the status of "Klamuth River" and "Lower Klamath" Indians, is not in accord with the statement in the fourth paragraph of page 1 of my letter of November 19, 1932, (L-A, 50666-32). I am advised that these two census rolls are inextricably mixed; that some years ago it frequently happened that Indians were changed from one roll to another by reason of inter-marriage between Indians of the different rolls, or by reason of change of residence from one part of the Klamath country to another part. Some of this confusion seems to arise because the Klamath Indians themselves have a custom of designating all Indians living below a certain point on the Klamath River as "lower Klamaths", and those living above that point as "upper Klamaths". This point seems to be above the village of the Weitchepc; and this would leave all of the original Klamath River Reservation and all of the connecting strip or Hoopa Valley Addition in the "Lower Klamath" country. However that may be,

the Indians of the "Klamath River" and "Lower Klamath" census rolls are equally entitled to rights on the Hoopa Valley Reservation and on the addition thereto.

The officials of the Hoopa Valley Agency realize that these rolls are not accurate and they cannot be accurately reconciled without a field census being taken. They desire that such a census be authorized.

95. Roblin's recommendations with respect to the D and E schedules and to assignment rather than allotment were approved by the Commissioner on February 20, 1933.

96. By letter of February 20, 1933, Commissioner Charles J. Rhoads advised Superintendent Boggess that approval of the Mortsolf D and E schedules would be given. No further allotments would, however, thereafter be made, he wrote, because Indians of the Connecting Strip and the Lower Klamath Strip (which he called the "former Klamath River

Reservation") would all be equally entitled to allotment on the Square (which he termed the "original Hoopa Valley Reservation"), and the available agricultural and grassland would be sufficient for so small a number of those qualified as to work injustice. The land would rather be assigned to those who would engage in actual beneficial use.

The relevant portion of his letter reads as follows:

We have come to the conclusion that allotment schedules "D" and "E", referred to by Mr. Roblin in his letter of January 12, 1933, which were submitted several years ago but which were not then approved because of the need for additional surveys, should now be brought up to date and submitted for further consideration. * * * We feel that these unallotted qualified Indians have the strongest claims to allotments of any of the Indians on the reservation.

We do not believe that further allotments should be made after the schedules referred to have been approved. Indians of the "Connecting

Strip" and of the former Klamath River Reservation would be entitled to allotments equally with those living on the original Hoopa Valley Reservation, and it clearly appears from the reports that there would only be sufficient agricultural and grazing land on the reservation to allot a very small proportion of these Indians. Hence, it would be practically impossible to determine which Indians should be given and which denied allotments as as not to work an injustice upon certain individuals.

* * * * *

* * * We believe it would be better to leave the lands in their present status, and assign the remaining unallotted agricultural and grazing lands to individuals who actually wish to make beneficial use thereof.

For reasons given after the schedules referred to above are approved, no further allotments at Hoopa Valley will be made at this time. [Emphasis added.]

Assignments were thereafter made, pursuant to Commissioner Rhoads' foregoing decision.

97. Most of the allotments on Mortsolf's Schedules D and E were thereafter, in 1933, approved; a few were

delayed, for reasons not material, until 1950.

98. The Indian Reorganization Act of June 18, 1934 (48 Stat. 984) provided, inter alia, if the Indians of a reservation voted, for an end to any allotments of Indian land in severalty, for continuation of any restrictions on alienation on any Indian lands and for the restoration to tribal ownership of any remaining surplus lands of any Indian reservation.

Section 18 of the act provided in pertinent part as follows: (48 Stat. 988):

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application * * *.

Two elections were held on the Hoopa Valley Reservation, one for the Klamaths and one for the Hoopas. In a letter of October 20, 1934 Commissioner Collier

advised the District Coordinator for the Reorganization Act that Superintendent Boggess was authorized to hold separate elections for the Hoopas and for the Klamath Indians, as follows (65 Dec.Int. Dept. 59, 68)

Superintendent Boggess is authorized to hold two separate elections on the Hoopa Valley Reservation, one of them on Hoopa Valley proper for the Hoopa, and another election on the territory occupied by the Klamath Indians, when the Secretary calls such election.

In both elections, held December 15, 1934, the vote was overwhelmingly against the applicability of the act.

99. All told, assignments of land on the Square were made to nineteen Indians, known to be non-Hoopas, of the Lower Klamath or Yurok tribe and of the Upper Klamath or Karok tribes.

100. (a) All told, 35 Indians known to be non-Hoopas, of the Lower Klamath or

Yurok tribes, the Upper Klamath or Karok tribe and the Redwood tribe, received allotments on the Square. Most of the allottees on the Square were, of course, Hoopas.

(b) Four Indians known to be of Hoopa blood received allotments on the Addition. Most of the allottees on the Addition were, of course, Yuroks.

(c) The non-Hoopas allotted on the Square were connected with the Square by residence there or by parentage, their parents having resided on the Square.

(d) The Hoopas allotted on the Addition were connected with the Addition by residence there.

Administrative Rulings

101. In connection with the allotment program, officials of the Indian Office on

a number of occasions ruled that Indians of the Addition and the Square--Klamaths and Hoopas and others--were equally entitled to rights in the entire reservation as enlarged and, specifically, in the Square. These rulings are detailed in the following findings.

102. In 1915, while surveys for the final allotments on the Square were under way, there were several cases of Indians from outside the reservation who unsuccessfully sought to be enrolled with the Indians of the reservation with a view to becoming eligible for an allotment. On such applicant, James McDonald, was a half-Yurok who had lived on the Addition for some years.

C. F. Hauke, the Chief Clerk of the Indian Office, directed that McDonald show by affidavit the dates of his residence on the reservation, how "tribal relationship

has been maintained," and that the matter then be presented to a council of Indians of the Hoopa Valley Reservation for an expression of views as to whether he and his children were considered to be "recognized members of the tribe."

On November 8, 1915, Superintendent Mortsolf at Hoopa valley advised that as instructed he had convened a council of five Indians, who had rejected McDonald's application as well as those of three other Indians, for the same reasons, stated as to McDonald as follows:

* * * James McDonald is not of Hoopa blood, and has no relatives [sic] either living or who have lived there; that he has never lived here, and that the quantity of land here is not any more than sufficient for the people who have always lived here.

On December 2, 1915, Hauke inquired of Mortsolf whether the council "represented all the tribes having rights on the

Hoopa Valley Reservation, or only the Hoopa Tribe," and on the following January 15 Hauke requested that new applications be submitted, giving details of birth and Indian blood and stating whether the applicant's parents were "enrolled and recognized members of one of the tribes having rights on the Hoopa Valley Reservation and received benefits therewith." Such new applications, he said, should be submitted to a council "representative of the tribes having rights on the Hoopa Valley Reservation" for an expression of their views as to whether the applicant or his parents have "at any time been considered as recognized members of one of these tribes."

Mortself asked for guidance as to what tribes had rights on the reservation, as follows:

"I am not, nor never have been sure just what tribes have

rights on the Hoopa Valley Reservation, never having seen a copy of the Act of Congress approved April 8, 1864 which is referred to in the Presidential proclamation determining [sic] the reservation.

I will thank the Office to send me this information which now is necessary for me to have in order to determine whether any council would be representative of all tribes having rights here.

To this Hauke replied on February 19, 1916 that the tribes occupying and belonging to the Hoopa Valley Reservation were the "Hunsatung, Hupa, Klamath River, Miskut, Redwood, Saiaz, Sermalon, and Tishtanatan":

The Act of Congress approved April 8, 1864 (13 Stat. L., 39), mentioned in Executive Orders of November 26, 1902 [an error], June 23, 1876 and October 16, 1891, makes no reference to the tribes having rights on the Hoopa Valley Reservation.

The tribes living on the reservation that have participated in tribal benefits and been recognized as belonging on the said reservation may be considered for the purpose of

passing on applications for enrollment as having rights therewith.

From the annual report it will be noted that the following tribes are listed as occupying and belonging to the Hoopa Valley Reservation: Hunsatung, Hupa, Klamath River, Miskut, Redwood, Saiaz, Sermalton, and Tishtanatan.

(According to the Congressional Directory for 1916, Hauke was as Chief Clerk of the Indian Office the third ranking officer of the office. He followed in rank the Assistant Commissioner and preceded the chief inspector and the heads of the divisions.)

The defendant correctly characterizes Hauke's letter as evidence of Indian Office treatment of the Indians residing on the Square, the Connecting Strip and the Klamath River Reservation as having a common interest in those three tracts regardless of where they resided.

In pursuance of Hauke's instructions,

Mortsolf added two members to the council, explaining to Washington that to the extent possible they represented the tribes listed by Hauke. He wrote that the Hunsatung, Saiaz and Tishtanatan were so scattered or intermarried with the Hoopa as to be extinct or unidentifiable, although councilman William Quimby was "a partial representative" of the Tishtanatan; that Hoopa "is the general name for practically all the minor tribes, which were represented at the time of the establishment of the reservation;" that the Redwood were once numerous but few were left, and that he had added William Stevens, "a full-blooded Redwood Indian," to the council to represent the Redwoods.

Of the Klamaths, Mortsolf said that they were "numerous;" that while "few of them live in Hoopa Valley proper, there are many of them adjacent, who are

landless and who wish to acquire reservation rights. David Maston, has been added to the Council, to represent this tribe."

McDonald's new application was submitted to the council as reconstituted and was rejected because, the minutes recited, McDonald "does not belong to any of the tribes entitled to enrollment on the Hoopa Reservation."

Mortsolf then forwarded McDonald's application and the minutes of the meeting at which it was rejected, with a letter, dated June 19, 1916, urging that the council's action be approved. He said:

"The case of James McDonald is typical of practically all of the applications for enrollment from outside the reservation, and should the Office approve of the action and wishes of the Council and reject said application, there will be no need to take up the other cases mentioned in previous correspondence, unless any applications are found to differ in some of the essential points. It will be noted that the Hoopa Council.

unanimously voted recommending that the application of James McDonald be rejected. This council is composed of Indians living on the Hoopa Valley Reservation proper and represents all of the tribes not now extinct enumerated in the act of Congress and presidential proclamation setting aside this as an Indian Reservation.

I hope that the Office may see fit to approve the recommendation and reject the application of James McDonald, insofar as his enrollment might entitle him to land within the Hoopa Valley Reservation. There are so many of these outside Indians who will apply for land and so little agricultural land available that it would defeat the purpose of allotment if the number of Indians were materially increased.

(Mortsolf is patently in error in referring, at the end of the first-quoted paragraph, to "all the tribes not now extinct enumerated in the act of Congress and presidential proclamation setting aside this as an Indian Reservation." There were no tribes enumerated in the act of 1864 (finding 10, supra) or in either

of the two executive orders dealing with the Hoopa Valley Reservation (findings 29, 33, supra).

On July 17, 1916, Hauke approved the rejection of McDonald's application, on the ground that McDonald was "never enrolled and recognized as a member of any of the tribes receiving benefits on the Hoopa Valley Reservation, nor did he ever maintain tribal relations therewith" and that the "representative tribal committee" had refused to adopt him.

Mortsolf had, with his letter of June 19, enclosed a letter from the council of the same date, on the general subject of the rights of Klamaths to allotments; the letter is set out in finding 89, supra. Hauke's letter of July 17 was addressed to Mortsolf and was a response to Mortsolf's letter of June 19 and not to the council's letter of the same date. Hauke does not

mention the council's letter, and no response to the council's letter appears in the record.

103. The next ruling was made in connection with a protest of the allotments of Hoopa Valley land to a family named Horn, Karok or Upper Klamath Indians on the Turpin schedule, who were born on the Upper Klamath and came to Hoopa Valley in 1893. Superintendent Mortsolf reported as follows, on October 14, 1918:

On the Klamath River there are two distinct languages spoken, namely, the Lower Klamath and the Upper Klamath. From the mouth up to and including Weitchpec, the Indians speak the Lower Klamath tongue and from above Weitchpec up as far as a[sic] Happy Camp, the Upper Klamath River language is spoken. These languages are separate and distinct and I assume that there are two separate and distinct Indian tribes.

At the time the selections were being made in that portion of the Reservation where the Horn allotments are located, a protest was made by James

Jackson, Anderson Mesket and several others to the effect that the Horn family were not Indians who were entitled to lands in this Reservation.

It is my understanding that the Hoopa Valley Reservation was established by an act of Congress, April 8, 1864 (13 Stat. 39) for the use and occupancy of several tribes of Indians among whom were mentioned the Klamath River tribes. It has never occurred to me that any distinction might be made between those Indians of Klamath River who live on the Upper and Lower part. I have, however, taken testimony of several witness [sic] publicly bearing upon these allotments and am submitting the same herewith. It is my opinion that there is no good reason why the Horn family should not be allotted at this time. Under date of July ly [sic], 1918, I was instructed by the Commission [sic] of Indian Affairs that those person on the original allotment schedule should be given the privilege of making the first selections.

Chief Clerk Hauke, in a letter of April 22, 1919 (which both parties treat as the answering letter or an answer to a similar letter), agrees that the reservation was intended for the accommodation of

the Indians of California, including both branches of the Klamath River tribe:

Receipt is acknowledged of your letters of...March 8, 1919, with respect to the rights of certain Indians belonging to the Upper Klamath Tribe or Band, to receive allotments with the Indians of the reservation under your charge.

In answer, you are advised that the Office concurs in your view, that the Hoopa Valley Reservation which was established by the Act of April 8, 1864 (13 Stat. L., 39-40), for the accommodation of the Indians of the State of California, was intended to include both branches of the Klamath River Tribe. Further no restrictions whatever are made in the Executive Orders relating to the reservation, nor is it believed that the protests of the few Indians thereof to members of the Upper Klamath Band, should be allowed to interfere with these Indians, who, in the main were placed on the allotment schedule made in 1895 by Special Allotting Agent Charles Turpion, as entitled to benefits of the Hoopa Valley Reserve.

Allotments of Square land to members of the Horn family were ultimately approved, and were among the allotments to

non-Hoopas (finding 100, supra).

104. In 1927, again, Karoks, as Indians living in the immediate vicinity of the reservation, were held eligible to enrollment and to allotment, conditioned, however, upon their removal to the reservation, which was found not to have occurred in the case at hand. The Assistant Commissioner held that the reservation had been created in 1864 for all the Indians of California and that the extension of the reservation in 1891 to include the Lower Klamath Strip and the Connecting Strip was for the benefit of the Indians living along the Klamath.

The case was first presented on December 22, 1916, when Superintendent John D. Kelley wrote to the Commissioner concerning the applications of two Karok Indians, cousins, Rosa Sunderland and Linda Ince, for enrollment on the Hoopa

Valley Reservation. Expressing some doubts as to whether the Karoks were a separate tribe or in reality the same as the "Klamath River Indians," he said that "[i]f these people have any right to enrollment it would be through the Klamath River Indians." He inquired "whether there is a distinction between the Klamath River Indians and the Hoopa Indians relative to tribal rights. Do the Klamath River Indians have any claim on the tribal lands of the twelve-mile square portion of the Hoopa Reservation?

Mrs. Sunderland and Mrs. Ince had been born and raised at Happy Camp on the upper Klamath, above its junction with the Trinity, and thus off the reservation, and had apparently never lived on the reservation.

Assistant Commissioner E. M. Meritt responded on January 20, 1927, that the

four reservations created under the 1864 act, of which the Hoopa Valley Reservation was one, were intended to "to accommodate all the Indians of California" and that since the setting aside of the Hoopa Valley Reservation did not specify the tribes to occupy it and since the addition of the two Strips was for the benefit of the Indians along the Klamath, the Klamath Indians living in the immediate vicinity of the reservation had as much right as any other Indians, conditioned, however, upon their removal to the reservation:

"In your letter you ask to be advised as to whether or not the Klamath River Indians have any claim on the tribal lands of the twelve-mile square portion of the Hoopa Indian Reservation. The twelve-mile square portion of this reservation was set aside by order of the Superintendent of Indian Affairs for California under authority of the Act of Congress of April 8, 1964 (13 Stat. L., 39), which authorized the setting aside of certain reservations for California Indians. These reserva-

tions were to be large enough to accommodate all the Indians of California. Neither the withdrawal nor the Act of Congress specified any particular Indians who were to occupy these reservations, and it is assumed that such Indians as are located in the immediate vicinity of the reservations are entitled to benefits thereon should they so desire. The one-mile strip on each side of the Klamath River was later added to the reservation for the benefit of the Indians living along the river. It is believed heretofore, that the Klamath River Indians have as much right on the reservation as any other Indians formerly residing in that part of the State of California, but it is believed that a removal to the reservation is necessary in order for them to obtain reservation land.

A second letter of May 11, 1927 from the Superintendent gave more information as to the distinction between Upper and Lower Klamaths--Karoks and Yuroks-- and advised that the upriver Karoks had never moved to or become residents of the reservation, as distinguished from the Yuroks, or downriver Klamaths, who lived

on the Addition, from Weitchpec, at the junction of the Trinity and the Klamath, to the ocean. Accordingly he wrote, only the Klamath Indians who lived from Weitchpec to the mouth of the Klamath River--that is, on the Connecting Strip and the Lower Klamath Strip--were entitled to reservation rights and were entitled to enrollment.

There being Indians from the mouth of the Klamath River practically to its head waters. Those from the mouth to Weitchpec are on our rolls, and are for the most part allotted; those from Weitchpec to Orleans, Happy Camp and up the river are not on the rolls of any agency so far as I know. * * *

* * * * *

It has been customary to assume or to say that all Indians of Del Norte and Humboldt Counties are under the jurisdiction of this Agency, however, the Indians from Weitchpec, up the river, are really public domain Indians and have never lived on any reservation. In view of the statement of your office in your letter of March 5, 1927, L.A. 586222 [not in present record] defining the

Hoopa Valley jurisdiction, it would appear that the only Klamath Indians under this jurisdiction would be the lower Klamath Indians which I take to be those from Weitchpec to the amount of the river.

Mrs. Sunderland and Mrs. Ince, as Upper Klamath Indians, were therefore, he continued, on the authority of the Commissioner's letter of January 10, 1927 (supra) not entitled to enrollment, because not resident upon the reservation, and could become so entitled only if they lived in the immediate vicinity of the reservation and moved to the reservation:

* * * [Y]our office ruled that Dan Effman and family, formerly a Karok Indian of the Happy Camp band, was entitled to enrollment here, he having resided here on the Reservation for a number of years. In view of the statements in your letters above * * * referred to, it would appear that the upper Klamath River Indians, among which is the Karok band, are not within the jurisdiction of this Agency, and that the only way they could place themselves within the jurisdiction of this

Agency would be to move to the Reservation and establish a residence thereon provided they were, prior to their removal to the Reservation, living in the immediate vicinity of this Reservation. It would appear from this that Mrs. Sunderland and Mrs. Ince would not be entitled to enrollment or allotment on this Reservation as they do not comply with any of the requirements cited above.

Accordingly, Mrs. Sunderland and Mrs. Ince were denied enrollment on the ground that neither they nor the tribe of which they were members, the Karoks, had moved to the reservation.

105. Lawrence McCarty, a Yurok born on the Square who lived there until he was 15, in 1920, and then worked off the reservation, living there part-time, applied for enrollment in 1931, with a view to selection of land on the Square which he hoped to have allotted to him.

Superintendent Boggess forwarded his application to Washington on February 12,

1931, saying:

Mr. McCarty desires to select land within the twelve mile square of the Hoopa reservation and inasmuch as in a previous letter the Office informed me that Klamath Indians might select land therein there appears to be no objection to the arrangement.

I, therefore, recommend approval of his request as submitted.

Commissioner Rhoads approved the application on March 9, 1931, as follows:

As he was born on the reservation of Indian parents, at least, one of whom was allotted, he is entitled to enrollment under the Oakes case (172 Red. Rep., 305), and you are authorized to enroll him under Section 324 of the Indian Office Regulations of 1904.

106. On July 8, 1930 Commissioner Rhoads in a letter to Superintendent Boggess advised that there being no restrictions in the executive order which in 1891 added areas to the reservation, an Indian of the Connecting Strip could

exchange his allotment for one on the square. The opinion was expressed in broad terms, generally permitting exchange of an allotment for another on the original reservation or within the areas added:

The receipt is acknowledged of your letter of June 14, 1930 regarding allotment rights on the Hoopa Valley Reservation and the additions thereto.

The Hoopa Valley Reservation was created under authority contained in the Act of April 8, 1864 (13 Stat. 39-40), for the accommodation of the Indians of the State of California, and was intended to include both branches of the Klamath River Tribe. The so-called connecting strip which was added to the reservation by Executive Order of October 16, 1891 is considered merely to be an addition to the Original Hoopa Valley Reservation. No restrictions whatever are made in the Executive Order relating to the reservation and no reason is seen why any Indian who holds his allotment in trust should not be permitted to change his land for vacant lieu land on the original reservation or within the areas added thereto.

107. Special Allotting Agent Roblin

expressed the opinion in his letter of January 12, 1933, that Indians of all the three parts of the reservation were equally entitled to lands on the Square (finding 94, supra). He said that the Indians of the "Klamath River" and "Lower Klamath" census rolls, by which he meant the Lower Klamath Strip and the Connecting Strip "are equally entitled to rights on the Hoopa Valley Reservation and on the addition thereto." He had tacitly assumed this, in his earlier report of November 19, 1932, that the Indians of the Lower Klamath Strip would probably not desire allotments from the lands remaining unallotted on the Square, and that 600 of the 934 Indians on the Connecting Strip and the Square would desire such allotments.

108. Commissioner Rhoads on February 10, 1936 halted allotments, and directed

that the remaining land on the Square be assigned, on the ground that Indians of the Addition and of the Square were equally entitled to allotments, and there there was insufficient land for allotment to all who would be entitled. The central portion of his ruling, more fully quoted in finding 96, supra, reads as follows:

"Indians of the "Connecting Strip" and of the former Klamath River Reservation would be entitled to allotments equally with those living on the original Hoopa Valley Reservation, and it clearly appears from the reports that there would only be sufficient agricultural and grazing land on the reservation to allot a very small proportion of these Indians.

The Hoopa Business Council of
1933

109. Historically, the Indian tribes who occupied or settled upon the Hoopa Valley Reservation were not politically organized, had no tribal government, at least in peacetime, and after the Hoopa

Valley Reservation was established did not participate in its administration. This state of affairs continued until 1915.

110. (a) In 1915-16, in connection with applications for enrollment with a view to allotment, Superintendent Mortsolf convened a council which the Indian Office directed be representative of all the tribes having rights on the reservation (finding 102, supra).

(b) All the members of the council, including the Yurok added to the council to represent that tribe, resided on the Square. A petition by the council to the Commissioner, set out in finding 89, supra, showed that despite the directions from the Indian Office the council in fact spoke on behalf of Hoopa or Square Indians and in opposition to Yurok or Addition Indians. See also finding 102, last paragraphs, supra.

(c) There is no evidence of any activity of this council beyond this brief period.

111. On May 5, 1930, Superintendent John D. Kelley reported to the Commissioner of Indian Affairs that the Hoopa Valley Reservation did not have a tribal council. (The report was made in connection with an application for enrollment, which Kelley thought should be denied, since the man involved had lived off the reservation all his life and did not plan to make his home on the reservation.) Of a council Kelley said that there was none and he was glad of it:

As to putting the case up to the tribal council, this reservation does not have one, for which I am thankful, as tribal councils are the biggest source of agitation of anything in the Indian service. They are usually made up the hand-picked agitators, and for the most part, the ones who can not, or will not, work or do anything for themselves.

112. Almost at the same time as this letter by Superintendent Keeley was written, Washington was writing to him, suggesting that a pending problem (refusal of an Indian to do certain irrigation work) be presented to the tribal council. This letter was answered by Kelley's successor, O. M. Boggess, on July 24, 1930. Boggess replied that the problem had meantime been solved and, further "we have no tribal council and I doubt the advisability of organizing one."

113. On January 10, 1933, Superintendent Boggess wrote to Commissioner Rhoads that since the time of the visit of a Senate investigating committee to the reservation, "our Indians at Hoopa" had become interested in organizing "a Business committee or as they call it Tribal Council" which would have between 5 and 12 members "to represent the Hoopas in

official matters." Boggess added he had no objection to this, because some of the "best Indians of the Valley" had been selected for the "Committee". He further explained that the Committee preferred to represent the Hoopas only, allowing the Klamaths down the river, "who but seldom come to Hoopa," to form their own council:

Because of the fact that the Indians down the Klamath river but seldom come to Hoopa, and their interests in many cases are different it is understood that they prefer a legally organized body of the Hoopas only; permitting the Klamaths to form a similar organization for their people if they should care to do so.

114. By letter of February 3, 1933, Commissioner Rhoads replied that the Indian Office had no objection to the formation of such a tribal council as the Superintendent had proposed. He cautioned, however, that its activities would be advisory only and that in most cases

final action would remain in the Department of the Interior. The letter authorized Boggess to call a council of Indians of his jurisdiction to adopt a constitution providing for election of the business committee.

115. In the meantime, on January 23, 1933, Boggess wrote again to the Commissioner advising that some of the Indians living along the Klamath River had also formed a business committee to represent the Indians residing along the river. Boggess recommended that since the terrain made it difficult for the Indians along the entire river to meet to elect representatives, this informally created committee should be recognized in "ordinary matters." He said:

"Owing to the exceedingly rough nature of this section and the lack of roads it would be exceedingly difficult to require the Indian people along the entire river to meet together

for a regular election of councilmen, and as the number of matters requiring their attention is but limited I do not think that they would be justified in going to this expense.

I suggest, therefore, that the Office write this body that it is possible that their organization has not been effected in exact accordance with its rules in regard to the election of a business committee but that it will be glad to recognize them in all ordinary matters which they wish to present in behalf of the Indians residing along the Klamath.

116. Commissioner Rhoads responded on April 10, 1933 that it had been understood that the council proposed in the Superintendent's first letter of January 10 (and already authorized (findings 113, 114, supra) was intended to represent "the various tribes of Indians within the Hoopa Valley jurisdiction" so that it could handle matters affecting all of the "Hoopa Valley Indians." The Indians along the Klamath, the Commissioner continued, could have a separate committee for "local

matters not involving the whole Hoopa Valley jurisdiction," but, he wrote, matters involving "the whole tribe" should be handled by the "the tribal business committee for the whole tribe." He said:

It was our understanding that the organization proposed in said letter of January 10 was intended to represent the various tribes of Indians within the Hoopa Valley jurisdiction. In this way the business matters affecting all of the Hoopa Valley Indians could, no doubt, be more economically and expeditious handled.

If the Indians residing along the Klamath River desire to have a separate business committee of their own for local matters not involving the whole Hoopa Valley jurisdiction, this Office has no objection. However, in matters involving the whole tribe, it is believed that they should act through their representatives on the tribal business committee for the whole tribe. We do not see the necessity, however, for selecting more than one representative from each of the eight districts for this organization.

117. When organized, the business committee of the Indians along the Klamath

River was advised by Superintendent Boggess that the committee "would have to be through the Hoopa Council and it would only be a sub-council." The Klamaths were "disappointed that they couldn't have their own full council," and the council "died out." (The quotations are from testimony of witnesses who recalled that attendance continued for only about a year.)

118. Sometime between February and May, 1933, Superintendent Boggess posted a notice calling for an election of the authorized council, but the response, he felt, was small and not representative, and no election was held at the appointed time. Thereafter, another plan was devised under which one representative was elected from each of a number of districts within the Square.

119. One June 3, 1933, seven Indians

who had been elected councilmen from districts of all of which were in the Square (and who were all residents of the Square) signed a petition to the ten newly-appointed Commissioner of Indian Affairs, John Collier, in which they described themselves as "Councilmen of the Hoopa Tribe" and asked approval and recognition of their body as the representative of the "Hoopa Indians" to consider problems "within our boundaries," the boundaries not being specified. The petition said:

We the undersigned duly elected Councilmen of the Hoopa tribe from the Hoopa Indian Reservation do hereby sincerely petition the Department of the Interior and John Collier, Commissioner of Indian Affairs, to be recognized as the authorized representatives of the Hoopa Indians to transact their business, negotiations and recommendations, to be consulted about expenditures [sic] and disbursements pertaining to the welfare of our tribe and absolute control of our tribal funds

or any disposition of said funds.

We sincerely wish to submit for your approval the organization of this tribe into seven Districts. Each of which have [sic] selected and elected by a majority of votes one Councilman for each district to meet one day each month to consider any problems which may arise within our boundaries.

* * * * *

120. On receipt in Washington of the petition, it was passed to the new Commissioner by J. R. Venning of the "Miscellaneous Section" of the Indian Office with a memorandum dated June 14, 1933, which, referring to the Department's letters of February 3 and April 20 (findings 114, 116, supra), said that no official report of the organization authorized had been received and that it was "quite probable" that the petition referred to the organization which had been authorized, and, further, that while it looked like a good plan it would be well to have the

constitution and the official report of proceedings before giving recognition.

121. Commissioner Collier thereupon on the following day wrote to Gilbert R. Marshall, secretary-councilman of the council, acknowledging receipt of the petition and requesting that Marshall confer with Boggess and ask him to write to Collier "as to the status of any tribal organization which may now exist at Hoopa."

122. Boggess was just about then, on June 19, writing to the Commissioner. Referring to the Office's letter of February 3 "authorizing the Indians of this jurisdiction to organize a tribal business committee" (finding 114, supra), he asked for recognition of a tribal business committee which had been elected in "each district of the reservation." The names of the districts were given. To

one closely familiar with the neighborhoods in the Square, the names of the districts, all place names in the Square, six of the seven being places in the valley itself, would have disclosed that the electorate of the council was limited to the Square. The letter did not otherwise indicate the scope of the area--Square or entire reservation--or of the Indians to be represented by the committee.

123. On July 10, 1933, Boggess sent the Commissioner a copy of the constitution of "our Business Committee," with his recommendation that it be approved.

Before the constitution was received, Assistant Commissioner William Zimmerman, Jr., on July 21, 1933, responded to Boggess' letter of June 19, sending him a copy of the council's petition of June 3 (finding 119, supra), stating the Boggess'

letter of June 19 gave insufficient information and asking for a report as to the organization and the matters taken up. This letter does not indicate that the constitution, mailed by Boggess on July 10, had been received.

124. The "Constitution and By-Laws of the Hoopa Business Council," (a single document), was sent by Boggess to the Commissioner on July 10. It provided as follows:

Article 1. This organization shall be known as the Hoopa Business Council.

Article 2. The members of the Business Council shall be elected to act for the tribe
* * *

The views of the tribe having been determined, the business council shall be cloaked with authority to act in any and all tribal matters, including tribal claims of every nature.

* * * * *

Article 3. The business council shall be composed of seven enrolled members of the Hoopa tribe; bona fide [sic] residents of Humboldt County,

California, and twenty-one years of age or over.

* * * * *

Article 18. This constitution shall be in full force and effect to govern the Hoopa tribe and business council on and after the date it is approved by the Commissioner of Indian Affairs at Washington, D.C.

Aside from the quoted references to "the Hoopa tribe," the constitution did not indicate the geographical scope of the jurisdiction of the council--whether Square or entire reservation, the districts from which the councilmen would be elected, the eligible class of electors, or give any other data which would disclose whether the council was to be representative of or empowered to act concerning the Square alone or the entire reservation.

125. On November 10, 1933 Commissioner Collier approved the constitution, in a letter addressed to the secretary of the Hoopa Business Council. The full text

of the letter read as follows:

This will advise that careful consideration has been given to the constitution and by-laws of the Hoopa Business Council submitted some time ago by the superintendent of the Hoopa Valley Indian Agency, and they are hereby approved.

This organization is recognized by this Service as being the official representative body of the Hoopa Valley tribe.

A note at the foot of the letter "Carbon to Hoopa Valley."

The Hoopa Business Council--Composition
and Operations

126. In July 1934, Superintendent Boggess responded to an Indian Office circular questionnaire on tribal governments on reservations. In answer to the question "Does your council or committee or other organization represent the entire reservation or jurisdiction or are there

separate organizations for each tribe" he said that the council represented the Square only:

Represents only the 12 mile square Hoopa proper [sic]. Klamath River, Extension a mile on each side of river from Hoopa reservation to Ocean, not represented on this council.

He confirmed this answer in responding as follows to a question as to the weaknesses of the present tribal government:

Inability to have proper representation from Klamath River portion. Difficulty of travel makes it impracticable for them to attend. Being a separate tribe they are not welcomed by Hoopas on strictly Hoopa matters.

127. The members of the Hoopa Business Council organized pursuant to the constitution and bylaws of 1933 were elected from six districts in the Hoopa Valley proper and one district on Bald Hills near the Valley, all in the Square,

by the Indians residing in those district.

128. Though the constitution of the Hoopa Business council provided that council members be enrolled members of the Hoopa tribe (finding 124, supra) Indians of Yurok and Karok blood were members for periods of many years. They were David Risling and Jerry Horne, residents and allottees of land on the Square; George Nelson and David Masten (the latter is the same "David Maston" as had represented the Klamaths on the 1916 council (finding 102, supra), both of whom held allotments on the Connecting Strip and were long-time residents on the Square; and Elizabeth Quimby, a long-time resident of the Square.

129. A number of Indians of mixed Yurok and Hoopa blood were members of the council. They were Edward Marshall, chairman in 1933-35; Gilbert Marshall, a

member during ten years, 1933-35 and 1945-50, and chairman in 1935-37; Julius Marshall, a member for five years, 1935-39; Mahlon Marshall, chairman during five years, 1939-43; James Marshall, a member in 1943-45; Ernest Marshall, a member in 1948-50; Delmar Colegrove, a member in 1938-39; Gene Colegrove, a member in 1939-40; Byron Nelson, a member in 1948-49 and 1959; and Peter Masten, a member in 1936 and chairman in 1948-50. The Marshalls were Hoopa, half-Yurok; the others had varying fractions of Yurok and Hoopa blood.

130. The Hoopa Business Council dealt not only with matters affecting the Square but also received delegations of Indians of the Addition and dealt with matters on or arising from the Addition. These matters, arising over the nineteen-thirties and nineteen-forties, included

disputes, expenditures and recommendations for improvements of roads, irrigation facilities and domestic water arrangements, a mineral lease, licenses for Indian traders and mapping along the Klamath River.

131. The council's Indian Court, to which it appointed as the reservation's Indian Judge David Masten, a prominent Yurok Indian (see finding 128, supra), passed upon disputes arising on the Addition as well as those arising on the Square, thereby exercising the same all-reservation jurisdiction as did the council itself.

Yurok and Addition Organization

132. The Yurok Tribal Organization, a California corporation, was formed in 1949 to represent and promote the interests of

all persons of Yurok ancestry, a group described as native to and resident of the Klamath River Basin, an area larger than the Addition.

133. A Yurok Indian Club is mentioned in the record in two widely-separated years. Nothing is known of its nature or membership.

134. On September 3, 1955 a constitution was adopted by a group of Indians, presumably Yuroks of the Connecting Strip, establishing an organization called the "Yurok Extension Business Organization," whose members would be Yuroks and which would exercise jurisdiction over the unallotted trust-status lands of the Connecting Strip. The Commissioner refused to approve the organization on the grounds, among others, that the organization would be confused with the "Yurok Tribal Organization" (finding 132, supra)

membership was limited to Yuroks while not all the residents of the area intended to be represented were Yuroks.

135. In 1961, long after the issue in the instant case had arisen, the Government encouraged the formation of a "Hoopa Extension Reservation Organization," to exercise jurisdiction over the unallotted trust-status lands on the Connecting Strip. The members of the organization would be allottees on the Connecting Strip, lineal descendants of such allottees, of a specified percentage of Indian blood, and persons who "should have been" allotted. Despite the support of the Indian Office for the adoption of a constitution (which would have accepted the premise of the Government in the instant case of a separation of the rights of the Addition and Square Indians) the constitution was voted down, 110 to 31,

the majority being of the opinion that they had a right to be members of an all-reservation group and intended to use legal means to enforce their rights.

1950--The Hoopa Valley Tribe, its Hoopa
Valley Business Council and the Official
Roll of the Members of the Tribe

136. In 1948, the Hoopa Business Council began formulating a program for the compilation of a current roll of the Indians of the Hoopa Valley Reservation as it originally was created, that is, the Square, for the purpose of controlling the revenues from the resources of the reservation as so defined. The discussions at council meetings of the compilation of the proposed roll, as reported in the minutes of the meetings, reflect a sentiment to

exclude from the roll Indians of the Addition.

137. The council approved a form of application for enrollment on the proposed roll, prepared by the chairman and secretary of the council. The form was distributed only in the districts of the council, located in the Square. It was not distributed on the Lower Klamath Strip and the Connecting Strip because it was intended to exclude from enrollment the Indians residing there, unless they could qualify as a descendant of an allottee on the Square.

138. The application form was entitled "Application for Enrollment--Hoopa Valley Reservation--as of November 1, 1948." Inquiry was made on the form only as to the degree of "Hoopa Indian Blood." The application form inquired as to the applicant's justification for applying for

enrollment, but did not state the basis upon which the applicant's eligibility for enrollment would be determined.

139. From the Indians who submitted application forms, the Hoopa Business Council prepared a list, entitled Schedule A, of those who had been allotted land on the Square or who were descendants of such allottees, and a list, Schedule B, of eighteen Indians who were not allottees or descendants of allottees on the Square, but were either "true" Hoopa Indians or Indians whom the council felt were entitled to membership in the tribe because their failure to obtain allotments was through no fault of their own.

140. At its meeting on April 6, 1950, the council set an election for May 13, 1950, for the purpose of adopting the schedules which it had prepared as the roll of Indians who would be entitled to

share in the revenues from the resources of the original reservation, that is, the Square.

141. A notice was posted, addressed to "The Electors Of The Hoopa Valley Indian Tribe," that the election on May 13, 1950 would have the following purposes: 1) "To determine the minimum degree of Indian blood which a member of the Hoopa Tribe must have to be eligible for Tribal enrollment in the future;" 2) "To adopt a new Constitution and Bylaws for the Tribe;" 3) "To adopt officially into the Hoopa Tribe that certain list, designated as Schedule A, of Hoopa allottees and their descendants, to enable them to share in Hoopa Tribal benefits and moneys;" and 4) "To adopt officially into the Hoopa Tribe that certain list, to be designated as Schedule B, of Indians and their descendants who were not given

allotments to enable them to share in Hoopa Tribal benefits and moneys."

The council had stated that persons at least twenty-one years of age, who had made application for enrollment, could be eligible to vote. The notice stated that the electors entitled to vote at the election must be not less than twenty-one years of age and must be on that list of Indians who made application for enrollment into the "Hoopa Tribe" prior to October 1, 1949, and that the list could be seen at the office of the Hoopa Indian Sub-Agency.

142. The "Hoopa allottees and their descendants" referred to in the foregoing notice to electors were the living allottees on the Square and their living descendants who had made application for enrollment and had been placed on Schedule A by the Hoopa Business Council. The

Indians on Schedule B were the eighteen Indians placed on the schedule by the Hoopa Business Council and were stated to be "either true Hoopa Indians" or to be entitled to membership in the tribe "since their failure to obtain allotments was through no fault of their own." The Indians on the list of Indians who made application for enrollment into the Hoopa Tribe prior to October 1, 1949, who the notice stated to be the electors entitled to vote, were not all of the Indians who had made application for enrollment. Rather, the Indians on this list, which the notice stated could be seen at the office of the Hoopa Indian Sub-Agency, were those Indians who had applied for enrollment and who the Hoopa Business Council had found to be allottees or descendants of allottees on the Square. Thus, the Indians on the list of electors

and the Indians on the Schedule A to be voted upon were the same.

143. The electors were not representative of the Indians of the entire Hoopa Valley Reservation in that they did not include (a) Yurok or other non-"true"-Hoopa non-allotted Indians of the reservation, primarily Indians of the Addition, who were not descendants of allottees on the Square, and their descendants; and (b) Indians who had been allotted on the Addition, and their descendants.

144. At the election, held on May 13, 1950, 106 persons voting, the proposed constitution and bylaws was adopted by a vote of 63 to 33.

145. The constitution and bylaws adopted on May 13, 1950 established an organization denominated the "Hoopa Valley Tribe." The membership of this

organization is described in Article IV of the constitution as follows:

Section 1. The membership of the Hoopa Valley Tribe shall consist as follows:

(a) All persons of the Hoopa Indian blood whose names appear on the official roll of the Hoopa Valley Tribe as of October 1, 1949, provided that corrections may be made in the said roll by the Business Council within five years from the adoption and approval of this Constitution, subject to the approval of the Secretary of the Interior and his authorized representative.

(b) All children born to members of the Hoopa Valley Tribe who are at least one-quarter degree Indian blood.

Section 2. The Business Council shall have the power to make rules governing the adoption of new members or the termination of membership in the tribe.

146. The constitution and bylaws of May 13, 1950 created an executive body called the Hoopa Valley Business Council and conferred upon the council authority to direct the distribution of the resources of the Square, in addition to the

authority (preceding finding) to make the rules governing membership in the "Hoopa Valley Tribe." The assumption of power over the Square was accomplished by Article III, Territory, which provided that the jurisdiction of the Hoopa Valley Tribe should extend to the Hoopa Valley Reservation as established by executive order in 1876, that is, the Square:

The jurisdiction of the Hoopa Valley Tribe shall extend to all lands within the confines of the Hoopa Valley Reservation boundaries as established by Executive Order of June 23, 1876, and to such other lands as may hereafter be acquired by or for the Hoopa Valley Indians of California.

147. Schedules A and B, the tribal roll (findings 139-40, supra) were also adopted at the election held on May 13, 1950. Schedule A was adopted by a vote of 17 to 16. The adoption into the tribe of each of the 18 persons on Schedule B was approved by varying majorities.

148. Residence on the Hoopa Valley Reservation was not a requirement for inclusion on Schedule A, the list of allottees and their descendants. "Many" (the word of the Government's District Agent in forwarding the official roll for approval) of the persons on Schedule A were not then residents of the Hoopa Valley Reservation.

149. In June, 1950, a Hoopa Valley Business Council was elected, as provided in the constitution and bylaws.

150. The Hoopa Valley Business Council, although its jurisdiction was by the constitution limited to the Square (finding 146, supra) acted upon matters in the other parts of the reservation, as had its predecessor, the Hoopa Business Council (finding 130, supra), such as approvals of land selections outside the

Square and a right of way for a road outside the Square.

151. On February 1, 1951, the Director of the Sacramento Area Office of the Bureau of Indian Affairs advised the Superintendent of the Hoopa Valley Reservation that the Indians of the Klamath Strip should be represented on the Hoopa Valley Business Council, as follows:

* * * * *

It is our opinion that the title status of the main portion of the Hoopa Valley Reservation and that of the Klamath River Strip extending downstream approximately 20 miles from this area is exactly the same, therefore any funds derived from the resources of the Klamath River Strip area should be accredited to the Indians of the Hoopa Valley Reservation. The Indians of the so-called Klamath Strip are, in our opinion, members of the Hoopa Valley Reservation.

We agree with your thought in the second paragraph of your letter that the Indians in the so-called Klamath Strip should have representation on the Hoopa Business Council.

We do not have any contemplated timber sales in this area at the present time, although, as you know, there have been several requests for such sales.

152. (a) On December 6, 1951, the Hoopa Valley Business Council appointed a committee to formulate a plan for the enrollment of additional Indians with the Hoopa Valley Tribe on a "C" Roll.

(b) The "C" Roll committee submitted a report at the March 28, 1952, meeting of the council with a request that the council fix the period of residence on the Hoopa Valley Reservation that would be required for enrollment on the "C" Roll.

(c) A year later, on April 2, 1953, the council established requirements for enrollment on the "C" Roll and set June 2, 1953, as the deadline for the acceptance of applications. These requirements were that an applicant must have resided in Hoopa for a period of 15 years, must have

had forebears born on a rancho on the Square; and must be of at least one-quarter Hoopa blood. On June 10, 1954, the council adopted a resolution declaring eighteen applicants for enrollment on the "C" Roll to be members of the Hoopa Valley Tribe.

153. On March 25, 1952, the Commissioner of Indian Affairs approved Schedules A and B, which had been adopted May 13, 1950 (finding 147, supra) and on September 4, 1952, he approved the constitution, with certain exceptions (withholding approval of a tribal court and requiring that the function of approval of the actions of the council be lodged in the Area Director rather than the Commissioner).

154. By letter dated September 4, 1952, the Commissioner advised the Chairman of the Hoopa Valley Business Council

that: "There is no objection to the operation of tribal business in accordance with the Constitution and Bylaws adopted by the Hoopa Valley Indians in a referendum held on May 13, 1950, until such time as this office and the Hoopa Valley Indians can establish suitable organization under provision of the laws of the State of California* * *."

155. On November 6, 1959, the Hoopa Valley Business Council adopted the following resolution defining the criteria which it had employed 6 years earlier in compiling the "C" Roll and purporting to clarify the criteria employed by the former Hoopa Business Council in compiling, some 10 years earlier, Schedules A and B, the so-called "Official Roll of the Hoopa Valley Tribe as of October 1, 1949," as follows:

Whereas: The absence of written rules and procedures to

explain the composition of the "Official Roll of the Hoopa Valley Tribe as of October 1, 1949," also corrections thereto, has been conducive to various interpretations of eligibility requirements, and,

Whereas: Lack of consistent actions in the determination of eligibility of applicants has resulted in charges that the Business Council has not acted in strict accordance with the Constitution and Bylaws of the Hoopa Valley Tribe, and,

Whereas: There is need for an accurate and complete membership roll to be used in conjunction with the allotment program desired by the Hoopa Valley Tribe.

Now therefore be it resolved: That the following definitions accurately describe the procedures followed and clarify the intent not heretofore expressed in the membership requirements as set forth in Article 4 of the Constitution and Bylaws of the Hoopa Valley Tribe approved September 4, 1952:

Definitions

1. Hoopa Valley Tribe

The Hoopa Valley Tribe consists of remnants of the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, and Tish-tang-atan Bands of Indians residing within the twelve-mile

square reservation created June 23, 1876, and their descendants.

2. Official Roll of the Hoopa Valley Tribe as of October 1, 1949

"The Official Roll of the Hoopa Valley Tribe as of October 1, 1949" consists of Schedule A captioned "Official Roll as of October 1, 1949, of Members of the Hoopa Valley Tribe Who May Participate in Tribal Benefits and Moneys" and Schedule B captioned "Addition to the Official Roll of Members of the Hoopa Valley Tribe Who May Participate in Tribal Benefits and Moneys" both schedules being approved at a general election on May 13, 1950, and approved by the Commissioner of Indian Affairs on March 25, 1952. Approval of the Schedule B applicants was given by voting on the 18 individuals named on the list.

3. Schedule A.
Schedule A consists of allottees living on October 1, 1949, whose names appear on the J. B. Mortsolf original allotment schedule for the Hoopa Valley Reservation approved March 2, 1922, and descendants of such allottees living on October 1, 1941.

4. Schedule B.
Schedule B consists of applicants living as of October

1, 1949, and filing at the same time as applicants who were included on Schedule A, whose residence within the twelve-mile square area of the Hoopa Valley was not subject to question, who although eligible to have received allotments were never allotted but who were generally considered as members of the Hoopa Valley Tribe and permitted to participate in Tribal Affairs, and their descendants living on October 1, 1949.

5. Corrections

Corrections to the Official Roll of the Hoopa Valley Tribe as of October 1, 1949 were authorized under Article 4, Section 1(2) during a period of five (5) years ending September 4, 1957. Such corrections applied to: "Persons born not later than October 1, 1949, who qualified by the same requirements as met by persons on either Schedule A or Schedule B comprising the October 1, 1949 roll, whose applications were filed within the five year period ending September 4, 1957."

6. Schedule C.

Pursuant to authorization contained in Article 4, Section 2 of the Constitution and Bylaws a schedule C application procedure was devised. A Schedule C applicant was required to have resided within the Hoopa Valley

Reservation for a minimum of 15 years, to have had forebearers born within the twelve-mile square Hoopa Valley Reservation, to have had at least $\frac{1}{4}$ degree Hoopa blood or have been a legally adopted child having at least $\frac{1}{4}$ degree Indian blood and to have filed an application within a sixty (60) day period ending June 2, 1953.

7. Children.

"Children" as used in Article 4, Section 1 (b) is restricted to persons born after October 1, 1949.

Procedures

The C Schedule established certain specific requirements to be met by those persons who were ineligible for enrollment under the requirements of Schedule A and Schedule B. Eligibility was determined on an individual basis and did not automatically pass from a parent to a child born prior to October 1, 1949. However, once an individual was approved for membership as a C Schedule applicant, he acquired the same rights and privileges as other enrolled members.

156. The following month, on December 11, 1959, the Hoopa Valley Business Council adopted a resolution amending the

resolution of November 6, 1959, purporting again to clarify the criteria employed by the former Hoopa Business Council in compiling Schedule A, which with Schedule B comprised the so-called "Official Roll of the Hoopa Valley Tribe as of October 1, 1949". This resolution amended definitions 2 and 3 of the prior resolution (preceding finding) to read as follows:

2. Official Roll of the Hoopa Valley Tribe as of October 1, 1949.

The Official Roll of the Hoopa Valley Tribe as of October 1, 1949 consists of Schedule A and Schedule B, as herein defined, both schedules being approved at a general election on May 13, 1950, and by the Commissioner of Indian Affairs on March 25, 1952.

3. Schedule A
Schedule A consists of allottees living on October 1, 1949, and descendants of allottees living on October 1, 1949.

1917-1958--Proceeds of the Sale of
the Lands of the Old Klamath
River Reservation

157. The 1892 act which provided for the sale of the lands of the Klamath River Reservation (finding 77, supra) provided, also, that the proceeds of the public sale of lands were to be a fund used by the Secretary of the Interior for the "maintenance and education" of the resident Indians. In 1917 the statute was amended to add to these purposes "the pro rata improvement of individual Indian allotments" and "the construction of roads, trails, and other improvements for their benefit." Act of March 2, 1917, 39 Stat. 969, 976.

158. The proceeds of the public sale of lands of the old Klamath River Reservation were held in a Treasury account entitled "Proceeds of Klamath River

Reservation," and interest on the sums therein was credited to an interest account with the same name.

159. In 1918 a road costing approximately \$16,000 was build through the area of the old Klamath River Reservation with the use of funds from the account "Proceeds of Klamath River Reservation." While the work was underway, Congress enacted general legislation that tribal funds could be spent only pursuant to a specific appropriation. Sec. 27, Act of May 18, 1916, 39 Stat. 123, 158. Thereafter \$3,215.12 was expended by the Superintendent to complete the road, without such an appropriation. In 1920 Congress, after the fact, authorized payment of this sum in the Act of February 14, 1920, 41 Stat. 408, 418, as follows:

That the Secretary of the Interior and the Secretary of the Treasury be, and they are hereby, authorized to allow

payment of an indebtedness amounting to \$3,215.12 incurred by the Superintendent of Hoopa Valley Agency, California, during July, August, and September, 1918, in the construction of a trail on the Klamath River Reservation, from the tribal fund known as "Proceeds of Klamath River Reservation, California," which was made available for that and other purposes by the Act of March 2, 1917 (Thirty-ninth Statutes at Large, page 976), but from which no expenditures were authorized by section 27 of the Act of May 25, 1918 (Fortieth Statutes at Large, page 591.)

160. On December 31, 1942 Superintendent Boggess requested authorization of an expenditure of \$200 from "the tribal fund of the Lower Klamath Indians" (by which he apparently meant the account "Proceeds of Klamath River Reservation"), as distinguished from what he characterized as the "tribal fund of the Hoopa Valley Indians" (by which he presumably meant the all-reservation fund in the account "Proceeds of Labor, Hoopa Valley

Indians," finding 167, infra), for the expenses of a visit by a committee of Lower Klamath Indians to the State legislature to seek a bill reimbursing the Indians for losses by a closing of the river to fishing in 1933.

161. As of March 19, 1947 there was \$5,107.35 in the account "Proceeds of Klamath River Reservation" and \$3,204.10 in the parallel interest account.

162. On March 19, 1947 the Superintendent reported with his recommendation for approval a "request from the tribal council of this area" for an allotment of \$300 from the interest account to pay the costs of a trip to Sacramento in re the "Claims of California Indians." (There was no such council. The record shows only a resolution requesting such an allotment, passed 25 to 0 "[a]t a meeting of the Yurok Indians of the lower Klamath

River held at Klamath California on March 23, 1947.")

163. A letter from the Sacramento Area Office of the Bureau of Indian Affairs dated February 3, 1954 addressed to the secretary of the "Yurok Tribal Organization" (finding 132, supra), stated that the office had been allotted \$1,000.00 of "Yurok Tribal funds," presumably funds in the account "Proceeds of Klamath River Reservation" for the program submitted by the secretary, including travel expenses of tribal delegates.

164. On September 19, 1934, by Department order in the Department of the Interior, such of the land on the former Klamath River Reservation as had been opened for public settlement under the provisions of the Act of June 17, 1892, (finding 77, supra) but which had not been settled upon, was withdrawn from

disposition pending possible restoration to tribal ownership. By a subsequent order on November 5, 1935, this land was continued in a state of withdrawal.

165. The withdrawal from sale of unsold lands of the former Klamath River Reservation (preceding finding) was made permanent in 1958. The Act of May 19, 1958, 72 Stat. 121 provided for the restoration of tribal ownership of 159.57 acres of land on the reservation at Klamath River, California and of other, larger tracts on other reservations. Title to "the lands restored to tribal ownership" was to be in the United States in trust for "the respective tribe or tribes" and the various tracts were "added to and made a part of the existing reservations for such tribe or tribes."

1955--Payment by the Government of the
Income from the Square Exclusively to
Persons on the Official Roll of the
Hoopa Valley Tribe

166. In 1951, the Sacramento Area Director of the Bureau of Indian Affairs (apparently the Commissioner's delegate in such matters (see finding 153, supra)) advised that any funds derived from the resources of the Klamath River Strip area of the reservation should be credited to the account of the Indians of the Hoopa Valley Reservation. His letter is quoted in finding 151, supra.

167. Until 1955, any revenues from both parts of the Hoopa Valley Reservation--the Square and the Addition--were deposited in a single United States Treasury Account, No. 14X7236, entitled "Proceeds of Labor, Hoopa Valley Indians."

The interest derived from the funds in this account was credited to United States Treasury Account No. 14X7736, entitled "Interest on Proceeds of Labor, Hoopa Valley Indians." Disbursements were made from these accounts for improvements on all parts of the reservation.

168. Although all the revenues from the reservation went into one account (preceding finding), Superintendent Boggess seems to have sought to relate the benefits from expenditures to the place of the source of the funds being expended. Thus, at a time in 1938 when the total revenues in Account No. 14X7236 derived from outside the Square were \$2,511.45, of which \$2,263.80 had been derived from a contract with a lumber company to cut timber at Johnson's Village on the Connecting Strip, Superintendent Boggess planned to spend only \$2,263.80 for water

developments at Johnson's Village, as "the amount received from the sale of cedar in that locality," though the appropriation for the water development at Johnson's Village was \$2,500.00. Actually, additional sums of \$187.70 and \$53.04 in the account had also been derived from the cutting of timber on unallotted trust-status tribal land at Johnson's Village.

169. On April 23, 1954 the Area Director of the Indian Bureau at Sacramento requested the establishment of an account for depositing "receipts to the credit of the Yurok Indians of California." The response of the Fiscal Section, dated April 29, 1954 listed five reservations in which "different groups of Yurok Indians resided"; on the list were "Hoopa Valley Reservation" and "Klamath River Reservation." On July 1, 1954 the Director of the Division of Budget and

Finance in the Office of the Secretary requested the Treasury to establish two accounts as follows:

147153	Deposits, Pro- ceeds of Labor, Yurok Indians of Lower Klamath River, Califor- nia.
147154	Deposits, Pro- ceeds of Labor, Yurok Indians of Upper Klamath River, Califor- nia.

Trust fund receipt, appropriation and interest accounts were opened, one each for the "Yurok Indians of Lower Klamath River," all ending in the number 53, and one each for the "Yurok Indians of Upper Klamath River," all ending in the number 54.

170. Commencing in 1955, revenues derived from the resources of the Connecting Strip were credited to Account No. 14X7154, "Proceeds of Labor, Yurok Indians of Upper Klamath River, California" and

revenues derived from the resources of the Lower Klamath River strip were credited to Account No. 14X7153, "Proceeds of Labor, Yurok Indians of Lower Klamath River, California." As of 1969 approximately \$72,070 had been credited to Account No. 14X7154, and \$3,956 to Account 14X7153. Revenues derived from the resources of the Square continued, as before, to be credited to the accounts for the benefit of the "Hoopa Valley Indians" (finding 167, supra). The major portion of these revenues has been from timber sales.

171. Beginning in 1955 and continuing to the present time, the Secretary of the Interior, upon requests made by resolutions of the Hoopa Valley Business Council, has each year disbursed, from the accumulated income in Account No. 14X7236 and its interest Account No. 7736 for the Hoopa Valley Indians (finding 167, supra),

per capita payments to the Indians on the official roll of the Hoopa Valley Tribe organized pursuant to the constitution and bylaws adopted at the election of May 13, 1950 (findings 136 et seq., supra).

172. The total of the per capita payments through February 1969 was \$12,657,666.50. The payments were made at the following times and in the following amounts:

Payment period	Total amt. each payment	Amt. paid each individual
#1 Jan 1955	\$76,500	\$100
Suppl Aug 1955	1,600	
Suppl Apr 1955	1,900	
#2 Sept 1955	\$158,600	\$200
Suppl Dec 1955	10,600	
#3 Jan 1956	\$255,600	\$300
Suppl Jan 1957	3,600	
#4 Oct 1956	\$178,600	\$200
#5 Apr 1958	\$277,500	\$300
Suppl Mar 1959	4,200	
Suppl Apr 1959	300	
#6 Dec 1958	\$265,100	\$275
#7 Apr 1959	\$261,630	\$270
Suppl Aug 1959	270	
#8 Dec 1959	\$275,942	\$281
#9 Apr 1960	\$275,931	\$279
#10 Dec 1960	\$458,304	\$448

Payment period	Total amt. each payment	Amt. paid each individual
#11 Apr 1961	\$459,096	\$444
#12 Dec 1961	\$382,320	\$360
Suppl Apr 1962	720	
Suppl June 1962	1,800	
#13 Apr 1962	\$381,625	\$355
Suppl June 1962	1,775	
Suppl Apr 1962	1,420	
#14 Dec 1962	\$479,600	\$436
#15 Apr 1963	\$480,630	\$433
#16 Dec 1963	\$703,425	\$622.50
#17 Apr 1964	\$703,700	\$620
#18 Dec 1964	\$625,240	\$539
#19 Feb 1965	\$625,937	\$541
#20 Dec 1965	\$604,237.50	\$512.50
#21 Apr 1966	\$605,696	\$512
#22 June 1966	\$696,000	\$600
#23 Dec 1966	\$534,600	\$445.50
#24 Mar 1967	\$534,417.50	\$443.50
#25 Oct 1967	\$233,530	\$193
#26 Nov 1967	\$233,530	\$193
#27 Feb 1968	\$233,593	\$191
#28 June 1968	\$233,593	\$191
#29 Aug 1968	\$465,129	\$374.50
#30 Nov 1968	465,129	\$374.50
#31 Feb 1969	\$464,746.50	\$371.50
	\$12,657,666.50	\$11,405.50

522-373--73-----7

173. The Secretary of the Interior has refused and has continued to refuse to distribute any income derived from the Square portion of the Hoopa Valley

Reservation to any Indians of the Hoopa Valley Reservation other than those who are members of the Hoopa Valley Tribe according to its official roll.

174. In 1958 the Deputy Solicitor of the Department of the Interior ruled that "no Indians other than those enrolled as members of the Hoopa Tribe of the original 12-mile square reservation and their descendants, have rights of participation in the communal property on that part of the Hoopa Valley Reservation." 65 Dec. Dept. Int. 59, 68 (1958). Making no reference to the presence of Klamaths on the Square, he held that the Hoopas had exercised jurisdiction over the Square from earliest times and that their rights were vested by 1891. The executive order of that year he held to have been merely "an aid to the administration of these two separated areas" and as making the former

Klamath River Reservation and the Connecting Strip a part of the enlarged Hoopa Valley Reservation only "technically." 65 Dec. Dept. Int. at 63, 64.

The Government does not in the instant case contend either that this opinion has any binding force or that it is correct in its facts. The opinion does not reflect the facts set out in these findings, primarily the presence of Klamaths on the Square from aboriginal times continuously to 1891 and beyond; moreover, it contains errors of commission and omission, among them the impression given throughout that the Hoopas were the sole occupants of the Square, from the time before the first location of the reservation in Hoopa Valley; that the tribal council on the Square was a permanent institution from 1916 (65 Dec. Dept. Int. at 62; compare findings 109-112,

supra); the impression given that Chief Clerk Hauke's letter of July 17, 1916, was an approving response to the council's letter of June 19, 1916 (65 Dec. Dept. Int. at 66; see finding 102, supra); and the statement that the allotments approved on the Square were submitted by the Hoopa Tribal Council (65 Dec. Dept. Int. at 67; compare findings 86-97, supra).

Ultimate Findings and Conclusions on
the Common Issue of the Exclusive Rights
of the Hoopas in the Square

175. Under the Act of April 8, 1864, authorizing the President to set apart and locate not more than four reservations in California, at least one to be in the northern district, of such size as he found suitable, for the accommodation of the Indians of California, without

specification of the tribes to be so accommodated, the President had discretion to authorize any Indian tribes of California to reside upon such reservations as he set apart. No Indian tribe resident upon a reservation created under the act could obtain vested rights to the exclusion of another group or tribe of Indians thereafter authorized by the President to share in the benefits of the reservation. Healing v. Jones, 210 F. Supp. 125, 138, 153, 170 (D. Ariz. 1962), aff'd 373 U.S. 758 (1963); Healing v. Jones, 174 F. Supp. 211, 216 (D. Ariz. 1959); Crow Nation v. United States 81 Ct. Cl. 238, 278 (1935).

176. Superintendent Wiley's public notices of August 21, 1864 and February 18, 1865 (findings 13, 21, supra) locating the Hoopa Valley Reservation on the tract thereafter called the Square, were issued

pursuant to the authority of the act of 1864 and subject to Presidential approval and, having made no mention of any Indian tribe, provisionally established the reservation for such Indians or tribes as might be settled or reside upon it with Presidential authority.

No tribe settled upon or residing upon the reservation pursuant to the notices could, in view of the grant of discretionary authority by the act of 1864 to the President, obtain vested rights in the Square to the exclusion of another group or tribe of Indians thereafter authorized by the President to share in the benefits of the reservation.

177. The so-called "treaty" made at Hoopa Valley in 1864 (finding 15, supra), said to be the source of the Hoopas' rights in the Square, is concededly not a binding treaty in the constitutional

sense. An agreement by an executive officer could not foreclose the President's authority under the act of 1864 to establish a reservation for such Indians as might be settled there with his approval, and thereafter to enlarge the reservation for the common benefit of the Indians of the added lands and of the original reservation.

178. Any rights to Hoopa Valley given by the treaty to the Hoopas were given equally to other tribes as well, including the Klamaths. The treaty was either made with a number of tribes including the Klamaths or the Klamaths became entitled to its benefits, in accordance with Section 1, Article 1 of its text (finding 15, supra), when they laid down their arms and lived in peace with the Government, or both.

179. The Hoopas were not the sole occupants of the Square, either in aboriginal times or thereafter. While the Hoopa Valley was the native territory of the Hoopa Indians, there were native villages of the Yuroks on the Square, in the canyon north of the valley proper, near the junction of the Trinity with the Klamath River, and nearby at a small distance from the river. At about the time of the aforesaid notices by Superintendent Wiley and thereafter, the residents of the valley included at least Hoopa, Klamath, and Redwood or Chilula Indians.

180. The evidence is abundant that the reservation was intended, from the outset, for the accommodation of numbers of tribes of Northern California, including the Klamaths, such as might reside there with Presidential approval, and that

Wiley, his successor and the officers of the Indian Office throughout recognized the rightful presence on the Square of a number of tribes (until the opinion of the Deputy Solicitor, in 1958 (finding 174, supra), approving the action of the Secretary of the Interior complained of in this case).

181. President Grant's order of June 23, 1876, establishing the Hoopa Valley Reservation "as one of the Indian reservations authorized to be set apart in California by act of Congress approved April 8, 1864" (finding 29, supra), established the reservation not for any specific tribe or tribes, none having been mentioned in the order, but for such tribes as might reside or settle there, then or thereafter with the approval of the President, and the tribes as were then resident upon it were subject to further

exercise of Presidential authority under the act with respect to the reservation.

182. The residents of the reservation at the time of President Grant's order included Hoopas, Klamaths, Saias and Redwoods. Still others (besides bands or sub-groups of Hoopas) had been settled there between 1864 and 1876, but have not been identified as remaining there in 1876.

183. President Harrison's order of October 16, 1891 (finding 33, supra), extending the boundaries of the Hoopa Valley Reservation to include the former Klamath River Reservation and the connecting strip of land between the two reservations, was a lawful exercise of the President's "continuing authority" under the act of 1864, and "large discretion about exercising it," "to alter and enlarge the [reservation] from time to

time in the light of experience." Donnelly v. United States, 228 U.S. 243, 256-57 (1913).

The words of the executive order "extended" the "limits" of the Hoopa Valley Reservation, " a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart * * * by Act of Congress approved April 8, 1864" "so as to include" the Addition, with the proviso that tracts to which valid rights had attached under the laws of the United States were "excluded from the reservation as hereby extended."

The plain and natural effect of the order was to create an enlarged reservation in which the Indians of the original reservation and the Indians of the added tracts would have equal rights in common. Cf. Halbert v. United States, 283 U.S. 753

(1931); Quinaielt v. United States, 102 Ct. Cl. 822 (1945). In extending the boundaries of the Square to include the Addition, peopled by Yurok Indians of Northern California, the executive order was patently carrying out the purpose of the act of 1864 to provide a reservation or reservations in the northern district of California for the accommodation of the Indian tribes of the region.

184. An exhaustive study of the background of the executive order of 1891 and of the legislative origins of the Act of June 17, 1892 (27 Stat. 52), providing for allotment and sale of the Klamath River Reservation, shows no sign of a plan, intention or understanding, executive or Congressional, such as is claimed by defendant to have existed, that the executive order of 1891 should join the Klamath River Reservation and the

Connecting Strip to the Square for administrative or "technical" purposes only -- as separate reservations without effect on the substantive rights of the Indians of the Square, or otherwise than as a single, integrated reservation in which all the Indians of the reservation as enlarged should have equal substantive rights. The intention defendant contends for is not once articulated in the voluminous history. No fact in the history, moreover, supports the assertion that the executive order was intended for convenience in administration only and without effect on substantive rights.

185. It quite clearly appears that the intended purpose of the executive order was to accomplish just such an enlargement of the Hoopa Valley Reservation as would bring about a single,

enlarged, integrated reservation, effective upon substantive rights.

Soon before the issuance of the executive order, the courts had held that the Klamath River Reservation had been abandoned as a reservation and had accordingly refused to punish white traders who entered the reservation area. Also, bills were steadily being proposed to Congress for the public entry and sale of the lands of the Klamath River Reservation. Some of these bills forbade allotment of lands thereon to the Indians as their homes and directed the removal of the resident Indians to the Hoopa Valley Reservation. The Department of the Interior opposed these bills unless they were amended to permit allotment. The Department had two objectives in mind -- to allot lands in severalty to the Indians of the Klamath River Reservation and of the Connecting

Strip (together constituting what became the Addition), and to expel traders from the Klamath River Reservation. Reservation status for the Addition would achieve both objectives. Only the incorporation of the Klamath River Reservation into an existing reservation would do, for the maximum of four reservations authorized by the act of 1864 had already been created. Incorporation of the Klamath River Reservation and the Connecting Strip into the adjoining Hoopa Valley Reservation was the natural solution; it had been recommended and considered for years before.

Joinder of the Klamath River Reservation to the Hoopa Valley Reservation for administrative purposes only or for less than all purposes would have jeopardized the achievement of the desired objective, in view of the necessity that the executive action pass muster with both courts

and Congress, which were both already of the view that Klamath River Reservation had been abandoned, for failure of the executive to incorporate it into one of the four existing reservations. As for the Connecting Strip, it had never had reservation status, and it could not get such status by a joinder to the Hoopa Valley Reservation "for administrative purposes only" but only by an incorporation, for all purposes, into a lawful reservation. No limitation whatsoever was, therefore, intended or imposed on the natural legal consequence of the incorporation of the Addition into the reservation.

The intention to affect substantive rights is confirmed by the explicit exception, in the text of the executive order (finding 33, supra), "from the reservation as hereby extended," of any

tract within the Addition to which valid rights under the laws of the United States had already attached. All else was to become part and parcel of the Hoopa Valley Reservation.

The materials cited by defendant do not prove, as claimed, that Congress understood the executive order otherwise or that Congress understood that the reservation was enlarged in such a manner as not to affect the common rights of the Indians of the enlarged reservation in the communal property of all parts of the reservation.

Almost immediately following the executive order, Congress on June 17, 1892 enacted a bill for the allotment of lands on the Klamath River Reservation, to be followed by the public sale of the remaining land, the proceeds of sale to be a fund for the benefit of the Indians of the

reservation (finding 77, supra). Bills of this nature had been considered for many years on the premise that the Klamath River Reservation was abandoned (see findings 50-77, supra); the proponents were not about to make their cause less attractive by amending the name of the reservation to be sold to call it the "former Klamath River Reservation, now part of the Hoopa Valley Reservation." Therefore neither the apparent disregard in the bill of the effect of the 1891 executive order on the Klamath River Reservation (perhaps in fact an ignorance of the issuance of the executive order) nor the continued existence of the fund of the proceeds of sale for the benefit of the Indians of the "Klamath River Reservation" tends to show any such Congressional understanding of the executive order as defendant contends for, or, indeed, a

Congressional understanding of any kind concerning the executive order. The fact is that the act of 1892, the administration over the years of the fund created by the act and the more recent legislative and executive postscript dealings with the "Klamath River Reservation" (findings 157-165, supra) were not intended or understood by their draftsmen and makers to have any bearing on the rights of the residents of the Hoopa Valley Reservation as extended by the 1891 executive order. Those men simply did not have the Hoopa Valley Reservation in mind (see finding 77, supra); there was no need that they should.

186. The highly complex program for allotments on the Hoopa Valley Reservation which extended from about 1890 to 1930 (findings 78-100, supra), too, shows no trace of such a plan, intention or

understanding as defendant claims underlay the executive order of 1891. The references to the separate parts of the reservation, in the texts of the instructions to the allotting agents, were simple matters of convenient naming of the three areas of the reservation to be allotted and are wholly immaterial to show a division of the reservation into separate parts for substantive purposes. The restriction of allotments on the Lower Klamath Strip to residents of the Old Klamath River Reservation was the requirements of the act of 1892 (finding 77, supra), providing for allotments on that reservation before public sale, reinforced by the provisions of the General Allotment Act of 1887 (finding 59, supra). When the question arose of the rights of Indians of the Addition to allotment on the Square, under the

executive order of 1891, the Commissioner in 1933 ruled that all Indians of the reservation, Addition and Square, were equally entitled to allotment on the Square (finding 96, supra).

The allotment program was marked by other administrative rulings as well, by high and low ranking officials, confirmatory of plaintiffs' position herein. See findings 101-108, supra. A notable such ruling was made by Chief Clerk Hauke in 1916 when he gave the opinion finding 102, supra) that not the Hoopas alone but a number of tribes including the Klamaths were entitled to recognition as Indians of th reservation and, therefore, to enrollment upon the reservation and, ultimately, to allotment.

187. The facts of the organizations of Indians on the reservation, prior to the organization of the Hoopa Valley Tribe

in 1950 to claim exclusive rights to the Square, are inconclusive and therefore immaterial on the issue presented. The ad hoc tribal council of 1916 was directed by the Indian Office to be representative of all the tribes on the reservation, including Klamaths, but in fact the council was composed of residents of the Square and though it contained a Klamath among its members unanimously petitioned Washington to exclude Klamaths from eligibility to allotment on the Square. The tribal council created in 1933 was ordered by one Commissioner to be representative of all the tribes on the reservation, but his successor (unknowingly, on the proof here made) approved a council representative of the Square only. And that council proceeded to exercise jurisdiction, both legislative and judicial, over the entire reservation, Square and Addition. Though

the council was representative of the Square or the "Hoopa tribe" only, for years at a time Yuroks were its members and chairmen. Even the council's Indian judge, who heard cases arising all over the reservation, was a Yurok (who had been allotted on the Connecting Strip and was a resident of the Square).

188. Nothing appearing to the contrary, and a great deal appearing in support, it is concluded that the effect of the executive order of 1891 was that all the Indians of the reservation as thereby extended--Addition and Square--got equal rights in the enlarged reservation and thus that the rights of Indians of the Addition are equal to those of the Indians of the Square, the Hoopa Valley Tribe or any other Indians of the reservation.

189. It follows that defendant acted arbitrarily in recognizing only the

persons on the official roll of the Hoopa Valley Tribe, whose rules exclude from membership most of the Indians of the Addition, as the persons entitled to the income from the unallotted trust-status lands on the Square. Such of the plaintiffs as are found herein to be Indians of the reservation will become entitled to share in the income from the entire reservation, including the Square, equally with all other such Indians, including the Indians of the Square.

Findings on the Individual Plaintiffs

190. The data in this finding were used in determining whether the residences and birthplaces of the individual plaintiffs were on or off the reservation. The data did not clarify all the cases and in the further proceedings it should be made

clearly to appear whether birthplaces and residences are located on or off the reservation.

Villages of the reservation are:

Lower Klamath Strip:

Requa or Rekwoi

Klamath

Hoppaw or Hopau

Waukel or Wohkel

Scaath

Turwar or Terwer

Starwein Flat

Suppur, Serper or Surpur

Connecting Strip:

Johnson's Village or Wauteck

Cautep or Kotep

Pecwan or Pakwan

Yocktar or Yockta--Donley's

Prairie

Schragoine or Surgone,

Seragoine, Sregon

Mettah or Meta

Natchka or Natchko

Moreck or Murek

Cappell or Kepel

Waase or Waasa or Whusi

Mareep or Merip

Kanick or Kenek

Waseck, Wahsek or Waseek

Martins Ferry

Weitchpec, Wetchpeck or Weitspus

The Square:

Northern Part: Pectah, Pactaw
or Pektul

Valley:

Norton Ranch

Mescat, Mascat, Miskut, or

Meskut Village

Soclish Ranch

Takinitlding Village,

Hostler or Hosler

Tsevenalding or Senalton

D-268

Village

Matilton or Medilding

Village

Kentuck or Howunkut Village

Campbell Ranch

Tishtangatang or

Djishtangading Village

Bennets Ranch

Spencers Ranch

Jackson Ranch

191. Jessie Dorothy Bristol Alameda.

Born 1918; 3/4 blood Indian (1/4 Yurok, 1/4 Hoopa). Born on the Connecting Strip and schooled there and on the Square. Has lived on the Square full time since 1928. Listed in the reservation censuses from 1919 to 1940, the year of the last complete census. (Entitled to recover as an Indian of the reservation.)

192. Louisa Dowd Wilder Ames. Born

1889; 1/4 blood Indian (1/4 Hoopa, 1/4 Yurok).

Born on the Connecting Strip and schooled there and on the Square. Lived off the reservation from the time she first married, at a date which does not appear, to 1964. Has lived on the reservation since then. Was allotted on the Connecting Strip and was listed in all censuses from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

193. Rethema Billy Peters Pollock Barber. Born 1913; full-blooded Indian (Yurok). Born on the Square and lived there until she was 8, when she moved with her family to her grandmother's allotment on the Connected Strip. Lived on the Connecting Strip to a date later than 1922, lived on the Square between 1936 and 1939, and now lives on the Connecting Strip. She has held an assignment of land on the Square, later transferred to her daughter, and was listed in the censuses

from 1914 to 1940. (Entitled to recover as an Indian of the reservation.)

194. Lulu Smith Donnelly. Born 1883; full-blooded Indian (Yurok). Born on the Connecting Strip and lived there until 1966. Since then has lived off the reservation. Allotted on the Connecting Strip and listed in the censuses from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

195. Frank A. Donley, also known as Frank Douglas. Born 1891; $\frac{1}{2}$ blood Indian (Yurok). Born on the Connecting Strip and lived there for 50 years. Now lives on the Lower Klamath Strip. Allotted on the Connecting Strip. Listed in the censuses for 1894, 1900, and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

196. Ollie Roberts Sorrell Foseide. Born 1921; full-blooded Indian ($\frac{7}{8}$ Yurok,

1/8 Hoopa). Born on the Connecting Strip, lived there and schooled there and on the Square. Has lived on the Lower Klamath Strip and on the Connecting Strip. She was listed on the censuses from 1921 to 1940. (Entitled to recover as an Indian of the reservation.)

197. Ella Steve Hostler Johnson. Born 1900; full-blooded Indian (Yurok). Born on the Connecting Strip. Lived on the Square from 1916 to 1933 and thereafter on the Connecting Strip. She selected lands on the Square; the selection was later transferred to one of her sons. Two of her sons and her husband were allotted lands on the Square. She was listed on the censuses in 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

198. Henrietta Wilma Masten Lewis. Born 1942; 5/8 blood Indian (Yurok). Born

off the reservation. Her father was $\frac{1}{4}$ Indian (Yurok) and her mother was 100% Yurok, a native of the Connecting Strip. The plaintiff was born after the last complete census. Both her parents were listed on the censuses from 1920 to 1940. Schooled on the reservation. Has lived "most of her life" on the Connecting Strip. (Case to be retried because of the inconclusive nature of the data. New briefs should discuss the effect of birth off the reservation as affecting status, and the facts as to duration of residence off the reservation, and their significance.)

199. Llewellyn Markussen. Born in 1932; $\frac{3}{4}$ blood Indian ($\frac{1}{4}$ Yurok, $\frac{1}{4}$ Karok). Born on the Square and lived there as an infant. From the age of 4 in 1936 until 1961 he lived on his mother's assignment on the Square. Since then he has lived on

the Connecting Strip. He was omitted from the censuses because his mother had never been listed. His mother was on her application enrolled as an Indian of the reservation in 1936 and was thereafter listed. (Entitled to recover as an Indian of the reservation.)

200. Theresa Billy Mitchell. Born 1891; full-blooded Indian (Yurok). Born on the Connecting Strip, lived on the Square as a child and since then has lived, for more than 50 years, on the Connecting Strip, where she was allotted. Listed in the censuses in 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

201. George McCovey, Sr. Born 1917; 3/4 blood Indian (Yurok). Born and schooled on the Connecting Strip. Lived on the Square from the time he was married in 1937 to 1969, when he returned to the

Connecting Strip where he now lives. Listed in the censuses from 1918 to 1940. (Entitled to recover as an India of the reservation.)

202. Myrtle Smoker McCovey. Born in 1899; full-blooded Indian (Yurok). Born on the Connecting Strip and schooled there, on the Square and elsewhere. Lived on her grandmother's allotment on the Lower Klamath Strip from 1919 to 1964 and then moved to Klamath Glen, apparently also on the Lower Klamath Strip. She was listed on the censuses in 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

203. Sadie Jones McCovey. Born 1891; full-blooded Indian (Yurok). Born on the Connecting Strip and lived there. Schooled there and on the Square. Has lived with her husband on his allotment on the Connecting Strip since her marriage in

1915. Has been listed on the censuses from 1915 to 1940. (Entitled to recover as an Indian of the reservation.)

204. Antone Obie. Born 1890; full-blooded Indian (Yurok). Born on the Connecting Strip where he lived until 1964 and where he was allotted. In 1964 he moved to Hoopa where he now lives. Listed in the censuses in 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

205. Erick William Pearson, Jr. Born 1931; 3/8 blood Indian (Yurok). Born in Lassen County, California of parents one of whom was a non-Indian and the other a 3/4 Indian (Yurok) native of the Square. He came to the Square at the age of 2, in 1933, and lived on land assigned to his mother in 1935. Moved in 1937 to a tract on the Square bought by his mother. Has lived on the Square since, except for

military service between 1949 and 1951. He was listed on the 1940 census. (Case to be retried because of the inconclusive nature of the data. New briefs should discuss the effect of birth off the reservation as affecting status.)

206. Frances James Roberts. Born 1898; full-blooded Indian (3/4 Yurok, 1/4 Hoopa). Born on the Connecting Strip and has lived on the Square, the Connecting Strip, and the Lower Klamath Strip. Listed on the censuses for 1900 and from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

207. Josephine Cooper Robinson Rogers Ludington Robinson. Born 1896; 3/4 blood Indian (1/2 Yurok, 1/2 Wintun). Born on the Square and lived on the Connecting Strip (except for a "short time" during her marriage) until 1959 when, apparently, she moved to Eureka, off the reservation.

She had been omitted from the census and successfully applied for enrollment in 1933, whereupon she was able to accept an assignment on the Connecting Strip. She was listed on the censuses from 1934 to 1940. (Entitled to recover as an Indian of the reservation.)

208. Alta Mae Kane Rogers. Born 1933; full-blooded Indian ($\frac{1}{2}$ Yurok, $\frac{1}{2}$ Paiute). Born on the Square and lived there and on the Connecting Strip until 1939 when she moved to her father's reservation, the Bishop Indian Reservation. In 1953 she married and, with her husband, moved to the Connecting Strip and lived there until about 1966 when she and her husband moved to Bishop, California. Occasionally visits her cabin on the reservation. She was listed on the censuses from 1933-1940. (Case to be retried because of the inconclusive nature

of the data. New briefs should discuss whether claimant has dual tribal status and, if so, the effect on the issue in the case.)

209. Florence Gensaw Green
Shaughnessy. Born 1902; $\frac{1}{4}$ blood Indian
(Yurok). Born on the Lower Klamath Strip
and has lived there for 60 years except
for "intermittent" periods of residence in
the Humboldt Bay Area. Listed in the
censuses 1910 through 1940. (Entitled to
recover as an Indian of the reservation).

210. Jessie Quinn McCoy Short. Born
1905; $\frac{1}{4}$ blood Indian ($\frac{1}{4}$ Hoopa, $\frac{1}{4}$ Yurok).
Born on the Connecting Strip and lived
there as a child and after schooling at
Hoopa. Presently resides off the reserva-
tion. Listed on the censuses 1910 through
1940. (Entitled to recover as an Indian
of the reservation.)

211. Sam Smoker. Born 1904; 3/4 blood Indian (Yurok). Born on the Square and schooled there and on the Lower Klamath Strip. Has lived on the Square from 1914 to the present. He received a tract of land by assignment in 1935. Listed on the censuses 1910 through 1918. He was thereafter omitted until his application for enrollment was made and approved in 1932. Thereafter he was again listed, from 1932 through 1940. (Entitled to recover as an Indian of the reservation.)

212. Elwood Theodore Swanson. Born 1926; 1/8 blood Indian (Hoopa). Born off the reservation. Lived part time with his grandmother at Hoopa from the time he was 8. At an unstated time his family moved to Hoopa and he completed grade and high school there; in that period he participated in Hoopa tribal ceremonial dances.

He lived on the reservation until his military service; thereafter lived at his birthplace off the reservation. He inherited interests in three allotments on the reservation and sold them. (Case to be retried because of the inconclusive nature of the data. New briefs should discuss the effect of birth off the reservation as affecting status.)

213. Oscar Lawrence Taylor. Born 1908; half-blood Indian (Yurok). Born on the Lower Klamath Strip, schooled there and at Hoopa. Since then has lived on the Lower Klamath Strip and for a time on the Connecting Strip, except when he was working off the reservation. Listed on the census rolls from 1910 to 1940. (Entitled to recover as an Indian of the reservation.)

214. Harry D. Timm Williams. Born 1924; half-blood Indian (Yurok). Born on

the Lower Klamath Strip and lived there through high school until 1941 when he moved to the San Francisco area where he took university extension courses. Spends weekends and vacations with his family on the reservation. Listed on the censuses 1930 through 1940. (Entitled to recover as an Indian of the reservation.)

215. Christopher Young. Born 1897; half-Indian (Yurok). Born on the Connecting Strip and has lived there all his life. Presently lives there. Listed in the censuses 1900 and 1910 through 1940. (Entitled to recover as an Indian of the reservation.)

216. Laura Mareep Sam Billy Young. Born 1891; full-blooded Indian (Yurok). Born and has lived on the reservation all her life, except while attending an Indian school. Listed on the censuses in 1900

and 1910 through 1940. (Entitled to recover as an Indian of the reservation.)

Ultimate Findings and Conclusions
on the Individual Claims

217. Plaintiffs Louisa Dowd Wilder Ames, Jessie Dorothy Bristol Alameda, Rethema Billy Peters Pollock Barber, Lulu Smith Donnelly, Frank A. Donley, Ollie Roberts Sorrell Foseide, Ella Steve Hostler Johnson, Llewellyn Markussen, Theresa Billy Mitchell, George McCovey, Sr., Myrtle Smoker McCovey, Sadie Jones McCovey, Antone Obie, Frances James Roberts, Josephine Cooper Robinson Rogers Ludington Robinson, Florence Gensaw Green Shaughnessy, Jessie Quinn McCoy Short, Sam Smoker, Oscar Lawrence Taylor, Harry D. Timm Williams, Christopher Young, and Laura Mareep Sam Billy Young are entitled

to recover, as Indians of the Hoopa Valley Reservation, an aliquot share in the revenues of the unallotted trust-status lands of the entire reservation, in an amount to be determined in proceedings under rule 131(c), the amount of recovery to be determined following trial of the claims of the remaining plaintiffs.

218. The claims of plaintiffs Henrietta Wilma Masten Lewis, Erick William Pearson, Jr., Alta Mae Kane Rogers and Elwood Theodore Swanson are set down for retrial.

CONCLUSION OF LAW

The court adopts and makes part of its judgment the foregoing findings of fact and ultimate findings and conclusions. Certain of the plaintiffs are entitled to recover in amounts to be

determined under Rule 131(c), and the claims of the others are set down for retrial in accordance with the opinion. The case is remanded to the trial judge for further proceedings.

NOTES

1. "By virtue of power vested in me by an act of Congress approved April 8, 1864, and acting under instructions from the Interior Department, dated at Washington City, D.C., April 26, 1864, concerning the location of four tracts of land for Indian reservations in the State of California, I do hereby proclaim and make known to all concerned that I have this day located an Indian reservation, to be known and called by the name and title of the Hoopa Valley Reserva-

tion, said reservation being situated on the Trinity River, in Klamath County, California, to be described by such metes and bounds as may hereafter be established by order of the Interior Department, subject to the approval of the President of the United States. Settlers in Hoopa Valley are hereby notified not to make any further improvements upon their places, as they will be appraised and purchased as soon as the Interior Department may direct."

"Austin Wiley,

"Superintendent Indian Affairs
for the State of California

"Fort Gaston, Cal., August 21, 1864."

2.

"To Whom It May Concern:

"Be it known that by virtue of power vested in me by Act of Congress

passed April 8, 1964, and acting under instructions from the Department of the Interior, I have located and set aside for an Indian Reservation the following described tract of land to be known as the Hoopa Reservation: Beginning at a point where Trinity River flows into Hoopa Valley and following down said stream, extending six miles on each side thereof, to its junction with Klamath River, as will be more particularly described by a map of said Reservation.

"Notice is hereby given to all persons not to settle or improve upon said Indian Reservation excepting as the Agent in charge may permit and in no manner to trespass thereon or interfere therewith.

"Free transit through the

Reservation will be permitted all travelers, pack-trains and stock, subject to such restrictions as the local Agent may see proper to impose.

"Austin Wiley,

"Supt. Ind. Aff's, Cal."

"Hoopa Reservation, Cal.,

"February 18th, 1865."

3.

"Executive Mansion,

"June 23, 1876

"It is hereby ordered that the south and west boundaries and that portion of the north boundary west of Trinity River surveyed, in 1875, by C. T. Bissel, and the courses and distances of the east boundary, and that portion of the north boundary east of Trinity River reported but not surveyed by him, viz: 'Beginning

at the southeast corner of the reservation at a post set in mound of rocks, marked 'II. V. R., No. 3': Thence south $17\frac{1}{2}$ degrees west, 905.15 chains, to southeast corner of reservation; thence south $72\frac{1}{2}$ degrees west, 480 chains, to the mouth of Trinity River,' be, and hereby are, declared to be the exterior boundaries of Hoopa Valley Indian Reservation, and the land embraced therein, an area of 89,572 acres, be, and hereby is, withdrawn from public sale, and set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in California, by act of Congress approved April 8, 1864. (13 Stats., p. 39.)"

4.

"Executive Mansion,

October 16, 1891"

"It is hereby ordered that the limits of the Hoopa Valley Reservation in the state of California, a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in said State, by Act of Congress approved April 8, 1964, (13 Stats., 39), be and the same are hereby extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley reservation to the Pacific Ocean; Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States

D-290

are hereby excluded from the reservation as hereby extended."

"Benj. Harrison"

IN THE UNITED STATES
COURT OF CLAIMS

JESSIE SHORT et al.,)	
)	
Plaintiffs,	)	No. 102-63
)	
v.)	
)	
UNITED STATES OF	)	PLAINTIFFS' JOINT
AMERICA,	)	MEMORANDUM OF
	)	PRETRIAL
Defendant,	)	CONFERENCE
	)	MARCH 12, 1981
HOOPA VALLEY TRIBE)	
OF INDIANS,)	
)	
Intervenor.)	
)	

The pretrial conference convened at 10 a.m., March 12, 1981 at the Court of Claims, Washington, D.C. The Honorable David Schwartz presided.

Appearing for plaintiffs were Harold Faulkner, Weyman Lundquist, William Wunsch, Cynthia Hecker and William Shearer. Appearing for defendant U.S. Government were James Brookshire and Duard Barnes. Appearing for defendant-intervenor the

Hoop Valley Tribe were Jerry Straus and Ed Fogarty.

Judge Schwartz and the parties discussed the judge's proposed order regarding appointment of experts and amici curiae. Plaintiffs expressed their opposition to the appointment of experts for the reasons stated in their correspondence with the trial judge. In response to questioning from the Court, plaintiffs said their thinking on the matter might change if the Government agreed to make partial payments to plaintiffs as they were adjudged eligible. Mr. Shearer also stated that, in order to answer the question, the plaintiffs would need to know how much more time would be involved in deciding the case as a result of the appointment of such an expert witness. The judge stated he would not appoint an expert if the appellate division of the

Court of Claims directed him not to or if it expressed an interest in the case being resolved quickly. He acknowledged that requesting an expert's opinion would involve additional time -- one drawback to the idea. The Government and the Hoopa Valley Tribe discussed with the trial judge the following possible timetable for obtaining expert advice if it is sought:

- a) the trial judge expects to appoint an expert within two months of the decision by the appellate division on the motions to dismiss and to substitute.
- b) The parties could then seek review of the trial judge's decision to appoint experts and/or of his choice of experts. With an expedited briefing schedule, briefing

could be completed within a month, and the trial judge expected that the appellate division could render decision on the requests for review within two months of the close of briefing.

- c) If the appellate division upheld the trial judge's designation of experts, the trial judge would require the expert to render a written report within three months.
- d) Cross-examination of the expert would take place one month after the written report was submitted (nine months after the appellate division's decisions on the

motions to dismiss and to substitute).

- e) Rebuttal witnesses could be presented at a later date.

The parties were admonished to review their files to ensure that all factual material is before the Court on the summary judgment motions. Exhibits and attachments to correspondence or other motions will not be considered unless and until the parties file supplements to their summary judgment motions.

The plaintiffs and the trial judge discussed other motions the plaintiffs could file to make progress in this litigation. Plaintiffs' counsel reported colloquy between them and the appellate division concerning their willingness to have the standards used by the Hoopa Valley Tribe applied to them and the appellate division's possible approval of

such an approach. Mr. Shearer explained how the Hoopa Valley Tribe's standards could appropriately be applied to the plaintiffs:

- a) Schedule A of the initial Hoopa Valley Tribe membership roll consisted of Indians who had been allotted land on the Square or who were descendants of such allottees. (202 Ct. Cl. at 960, Finding 139). Plaintiffs contend that under this criteria all plaintiffs who are allottees of land on the entire Reservation or who are descended from such allottees should qualify.
- b) Schedule B of the initial Hoopa Valley Tribe

membership roll consisted of Indians who were not allottees or their descendants but who were either "true" Hoopa Indians or Indians whom the council felt were entitled to membership in the tribe because their failure to obtain allotments was through no fault of their own. (202 Ct. Cl. at 960, Finding 139). While this standard was somewhat subjective, plaintiffs believe that a comparable but completely objective standard, under this criteria, will include all plaintiffs who are census enrollees or who are

descended from census enrollees. Further, plaintiffs who do not qualify as allottees, enrollees, or descendants of allottees or enrollees, would be permitted to establish their eligibility by other evidence of having a substantial connection to the Reservation (such as proof that their ancestor's omission from the census roll or allotment roll was through no fault of their own or other evidence establishing that the plaintiff is a "true" Indian of the Reservation.

- c) The qualifications for enrollment in the Hoopa

Valley Tribe under the "C" Roll were established in 1953. The "C" Roll required residence by the applicant in Hoopa for 15 years, an ancestor born on the Square, and 1/4 Hoopa blood. (202 Ct. Cl. at 964, Finding 152 (c)). For purposes of qualifying plaintiffs, this criteria should be expanded to include an ancestor born anywhere on the Reservation, not just the Square.

The trial judge stated one reason he desired expert assistance was in considering hard cases such as the eligibility of an individual born in Texas with 1/64 blood of Reservation Indians who never saw the Reservation. He also made a

distinction between persons who had blood of Southern California ethnic Indian groups and those with blood of Northern California groups who settled on the Hoopa Valley Reservation. Mr. Wunsch assured him that the number was small.*/_

Mr. Wunsch also noted that there are a substantial number of the members of the Hoopa Valley Tribe who have never resided on the Reservation, and that some of these people may never have seen the Reservation.

The trial judge suggested that to facilitate rulings on eligibility, plaintiffs' counsel present to him the

*/_ Reviewing Harold Faulkner's Letter of September 28, 1978 to the trial judge, plaintiffs note that of the Faulkner plaintiffs only 41 have less than 1/16 Reservation blood ("Types A and B" are Reservation blood). Reviewing the motions for summary judgment made on behalf of plaintiffs represented by Messrs. Duke and Shearer, plaintiffs note that all plaintiffs represented by said counsel have 1/16 or more Reservation blood.

names of the plaintiffs presently subject to summary judgment motions in groups according to the closeness of their association with the Reservation.

Mr. Wunsch noted that the Faulkner Plaintiffs' second summary judgment motion, filed in 1976, had covered nearly 400 plaintiffs who possessed the same qualifications as the 22 sample plaintiffs previously adjudged eligible. He further informed the trial judge that in 1978 the Faulkner plaintiffs had submitted to the Government descriptions of approximately 600 plaintiffs considered to be highly qualified. Although the Government had made a commitment to review this data and consider conceding the eligibility of these plaintiffs, it had never reported the results of its review.

Mr. Shearer stated that he had

previously identified in his second motion for summary judgment 22 plaintiffs whom he believed to have identical characteristics as the 22 sample plaintiffs found to be Indians of the Reservation in the Court's 1973 decision. The Government had also promised in 1978 to review the data concerning these plaintiffs but had never reported on its review. Mr. Brookshire stated he did not recall the data referred to by plaintiffs.

The trial judge mentioned a recent order of the appellate division in the Alyeska case permitting partial payments to a plaintiff, and suggested plaintiffs review that order with an eye toward making a motion for payments to plaintiffs already adjudged eligible.

Plaintiffs informed the judge that they had made progress in the accounting phase of litigation and would

be filing some motions on that subject.

The trial judge and the parties discussed the current status of the computerized records on the factual backgrounds of the plaintiffs. It was agreed that the parties would meet and discuss steps for making plaintiffs' data base and programs a joint project so that disputes over the accuracy of the computer would be eliminated. Plaintiffs were requested to propose an order on the subject.

Dated:

Respectfully submitted,

Harold C. Faulkner

Of Counsel:

Wallace A. Sheehan
William C. Wunsch
Faulkner, Sheehan
& Wunsch

Clifford L. Duke, Jr.

E-14

Heller, Ehrman, White
& McAuliffe

By: William Shearer

Of Counsel:

Bryan R. Gerstel
William K. Shearer
Duke & Gerstel

F-1

[letterhead of Duke & Gerstel]

December 9, 1983

Mr. Christopher James Eddy
326 Cody Court
Roseville, CA 95678

Re: Jessie Short, et al. v. United
States, United States Claims
Court No. 102-63

Dear Mr. Eddy:

On October 6, 1983, the United States Court of Appeals for the Federal Circuit unanimously upheld without any change the 1982 decision of the trial judge in the U.S. Claims Court establishing standards by which Plaintiffs will be entitled to recover judgment as Indians of the Hoopa Valley Reservation. Attached to that decision was a list of Plaintiffs found qualified to recover. You are not now included on the list of those entitled to

recover.

A total of 101 of the 130 Plaintiffs whom we represent are now entitled to recover. Both in the Claims Court and in the Court of Appeals, we argued for entitlement standards which would have qualified every Plaintiff we represent. While we were in agreement with much of the trial court's decision, we argued in the Court of Appeals that census enrollment should be treated as the equivalent of an allotment for purposes of determining entitlement, and that the one-fourth Indian blood quantum should be applied only to persons born after April 23, 1976, rather than October 1, 1949, the date of organization of the Hoopa Valley Tribe. In spite of what we believe were convincing arguments, the court sustained the trial judge on both the matters to which we objected. The United States and the

Hoop Valley Tribe attacked the decision of the trial judge because that decision gives a recovery to over half of the Plaintiffs in the case, and leaves the door open to additional entitlements upon resolution of certain factual disputes or where manifest injustice would result from denial of a recovery.

We have received a number of communications from Plaintiffs asking us to seek review of the standards decision by the United State Supreme Court. There is only one avenue by which that decision can be further challenged. A petition for writ of certiorari may be filed in the Supreme Court, requesting review of the lower court's decision. The Supreme Court is not required to accept such a petition and, in fact, both the United States and the Hoopa Valley Tribe have twice sought review of lower court decisions in the

Short case, only to be refused both times. It is more likely than not that both the United States and the Hoopa Valley Tribe will again petition the U.S. Supreme Court for a writ of certiorari in the hope of overturning the lower court's decision on entitlement.

We have carefully considered the requests we have received, and have decided that it would not be in the best interest of the overwhelming majority of the Plaintiffs we represent for us to file a petition for writ of certiorari. If the Supreme Court agreed to review the standards decision of the lower court, the result would be to jeopardize the present right of recovery of 101 of the 130 Plaintiffs whom we represent.

Further, this case is now over 20 years old and the courts are finally concurring in our view that any further

unnecessary delay would be unconscionable. The new trial judge who has been assigned to the case in the U.S. Claims Court has indicated a strong desire to bring the Short case to a close within a year. To accomplish this objective, the case will require constant attention at the trial court level during 1984. We believe it is in the interest of our clients that we concentrate on bringing the case to a close providing prompt payment of the judgment sum to all who qualify as Indians of the Reservation.

As to some of the 29 Plaintiffs whom we represent, and who are not now entitled to recover, there is still an opportunity for recovery. In cases where there is a factual dispute, the resolution of such a dispute in Plaintiff's favor, could cause the Plaintiff to meet the entitlement standards under the court's present

decision. Further, the court has left open the possibility of qualifying Plaintiffs who do not meet the exact standards of the decision, but who are entitled to recover on a manifest injustice theory. We will continue to press the claim of Plaintiffs who may be held entitled to recover by resolution of a factual dispute, or under a theory of manifest injustice. We are already preparing to bring motions in this regard.

What we will not do, however, is risk the recovery of the 101 Plaintiffs already held entitled by petitioning for a review of the standards decision of the U.S. Claims Court as upheld by the Court of Appeals.

We are sending this letter to all Plaintiffs whom we represent, whether or not they are entitled under the 1983 standards decision, because we have

received communications from persons in both groups. Those who have not been held entitled to recover may want to petition the Supreme Court for a writ of certiorari, and have the right to do so.

In this connection, bear in mind that each Plaintiff in the Jessie Short case is named in an individual capacity, and is not acting in a representative capacity as to the group. Consequently, if a Plaintiff has been held to be entitled to recover under the present standards decision, that Plaintiff has no standing to petition for other Plaintiffs who are not entitled to recover under the court's standards decision.

On the other hand, if you are a Plaintiff who has not been held entitled to recover under the standards decision, you have a right to petition the United States Supreme Court for a writ of

certiorari. While we have stated that we will not so petition on your behalf, we will certainly cooperate fully with you if you desire to retain an attorney who will so petition. If you desire to do so, we urge you to act immediately. Any petition for writ of certiorari must be filed by January 4, 1984, unless the Supreme Court is requested to and grants additional time for filing the petition. If your counsel desires an extension of time in which to file the petition, the request must be on file in Washington, D.C. in time for the court of act on it before the January 4, 1984 deadline. Therefore, if you wish to petition for a review of the 1983 standards decision, we encourage you to promptly secure counsel to file the petition, and ask your counsel to notify us that he will be representing you in this matter. We shall cooperate fully in

promptly providing your counsel with information he may need in order to protect your rights.

A word is in order about future rights on the Reservation which are not being decided in the Short case. The standards decision relates only to the recovery of a money judgment for the past wrong of the Government, and does not determine standards for any future organization by Plaintiffs of an Indian tribe. Following disposition of the case, it is probable that Plaintiffs will seek to organize an officially recognized tribe. At that point, the Indians themselves, will set their own standards for admission to and participation in the tribe. Many of those not held to be entitled in the Short proceedings could well qualify for future rights on the Reservation under membership standards adopted by an organized tribal

group.

In conclusion, if you do desire to change counsel and petition for writ of certiorari in the United States Supreme Court, we urge you to act promptly in order to protect your rights.

Sincerely yours,

By: CLIFFORD L. DUKE, JR.

By: WILLIAM K. SHEARER

CLD/WKS:mcm

G-1

[letterhead of Faulkner, Sheehan & Wunsch]

January 26, 1984

Margaret Mathews
P. O. Box 74
Crescent City, CA 95531

Re: Jessie Short, et al.
v. United States
United States Claims
Court 102-63

Dear Plaintiff:

Please give this letter your immediate and careful consideration since it concerns a matter of importance to you as a plaintiff in the Jessie Short case.

On March 31, 1982, Trial Judge David Schwartz of the United States Claims Court made a decision fixing the requirements which qualify for a monetary judgment for a share of Hoopa Valley Reservation revenues. Shortly thereafter we sent a newsletter to all the plaintiffs advis-

ing them of this decision and enclosing a copy of the requirements fixed by Judge Schwartz.

On behalf of the plaintiffs we then appealed from Judge Schwartz's decision asking the Court of Appeals to make some changes in the requirements to enable more plaintiffs to qualify. The Government and the Hoopa Valley Tribe also appealed asking that the requirements be made more strict so that few plaintiffs would qualify.

On October 6, 1983 the Court of Appeals, by a unanimous decision of five judges, approved the requirements fixed by Judge Schwartz and said they should not be changed in any way. We are enclosing another copy of these requirements.

At this time 2,303 plaintiffs have been adjudged to be qualified to receive a share of Reservation revenues

under the requirements fixed by Judge Schwartz and now approved by the Court of Appeals. The remaining 1,440 plaintiffs have not yet been ruled upon by the court. No plaintiff has as yet been disqualified. We will be working throughout 1984 to qualify as many of the remaining plaintiffs as possible under the requirements fixed by Judge Schwartz. We believe that more will qualify under these requirements.

However, on the basis of the information we now have it appears that a number of plaintiffs will not be able to qualify under these requirements. We want you to know now that we do not believe that you will qualify under these requirements unless you can provide us with new information which would show you have a very strong and close personal or ancestral association with the Hoopa

Valley Reservation.

We also want you to know now that we have done all we can, as your attorneys, to change the requirements. The only possible way the requirements could now be changed would be by convincing the United States Supreme Court to review the decisions by Judge Schwartz and the Court of Appeals and to find that a change is justified. We feel that any further effort to change the requirements by asking the Supreme Court to review these decisions would have little chance of success and would be harmful to the majority of the plaintiffs who are now qualified and will qualify under the existing requirements. We therefore believe we are obligated to defend the lower court decisions as they now stand. There is thus a conflict of interest which prevents us from representing you in

seeking any Supreme Court review for the purpose of trying to change the requirements.

IF YOU FEEL THAT A FURTHER EFFORT SHOULD BE MADE TO CHANGE THE REQUIREMENTS BY ATTEMPTING TO OBTAIN REVIEW BY THE SUPREME COURT, YOU SHOULD SEEK INDEPENDENT ADVICE FROM OTHER LEGAL COUNSEL. THE TIME FOR ASKING THE SUPREME COURT TO REVIEW THE DECISIONS FIXING THE REQUIREMENTS WILL EXPIRE ON MARCH 4, 1984. IF YOU DECIDE GO GET ADVICE FROM OTHER ATTORNEYS ABOUT SUPREME COURT REVIEW, YOU SHOULD DO SO RIGHT AWAY.

We will of course try to qualify you under the existing requirements with the information we now have, but we are not optimistic that we can do so. If you can provide us with any new information which shows that you have a close association with the Hoopa Valley Reservation, it

will increase your chances of qualifying.

In deciding what action you should take, it is important that you have in mind that the requirements fixed by Judge Schwartz are solely for the purpose of qualifying for a monetary award in the Jessie Short lawsuit. Judge Schwartz's objective in fixing the requirements was to equalize the distribution of Reservation revenues. Prior the filing of the lawsuit, the Government had been distributing Reservation revenues exclusively to a particular group of Indians associated with the original "Square" portion of the Reservation who had organized in 1950 under the name "Hoopa Valley Tribe." The Jessie Short lawsuit was filed in the Claims Court to obtain for the Indian people associated with the "Addition" to the Reservation along the Klamath River the distribution of Reservation revenues

on an equal basis with those associated with the original "Square" portion. Consequently, Judge Schwartz decided that in order to qualify for a share of these past revenues, Jessie Short plaintiffs should meet the same requirements that had to be met by those who had become members of the "Hoopa Valley Tribe" for purposes of receiving a share of those revenues.

Judge Schwartz, in fixing these requirements, and the Court of Appeals, in approving them, both emphasized that these are the requirements only for individual entitlement to receive a monetary award in the Short case for a share of past Reservation revenues. Thus any tribal organization that is formed for the Indians of the Hoopa Valley Reservation in the future will be free to fix its own membership requirements and to admit to membership persons who did not qualify for an award

in the Short case.

You have probably recently received in the mail a proposal from the Hoopa Valley Business Council that the Hoopa Valley Tribe would withdraw all objections to the qualification of Jessie Short plaintiffs to receive a monetary award for a share of past Reservation revenues if the plaintiffs would agree to legislation making the "Square" the exclusive property of the Hoopa Valley Tribe. Do not be misled by this proposal. The mere withdrawal by the Hoopa Valley Tribe of its objections to plaintiff qualification would not assure that you would qualify. The Government is the principal defendant in the Jessie Short case. The Claims court will not qualify any plaintiff who does not meet the requirements the Court has fixed if the Government objects, which it can be

expected to do so. If legislation were enacted making the "Square" the exclusive property of the Hoopa Valley Tribe, then you would lose any chance you might have of sharing in future revenues from the timber on the "Square." The timber on the "Square" is being harvested on a sustained yield basis, so it can be expected that the proceeds from the sale of timber on the "Square" will be substantial for many years to come.

Remember that the reason it was necessary to file the Jessie Short lawsuit in the first place was that the Government took the position that the Hoopa Valley Reservation was composed of two separate reservations--one being the original "Square" portion and the other being the "Extension" along the Klamath River. Consequently, the Government said all of the revenues from the "Square" belonged to

the Hoopa Valley Tribe. This view was vigorously argued in the Jessie Short lawsuit by both the Government and the intervening defendant, the Hoopa Valley Tribe, until the Claims Court ruled in 1973 that the Hoopa Valley Reservation was one reservation. The 1973 judgment of the Claims Court in the Short case established the right of all Indians of the Hoopa Valley Reservation to share equally in the revenues and other benefits of the "Square." It would be foolish indeed to surrender this extremely valuable right.

So, don't be misled by anything told to you or written to you by members of the Hoopa Valley Tribe. Whatever you do, we recommend that you do not give any support to the current efforts of the Hoopa Valley Tribe to take over the "Square."

If you have any questions

G-11

regarding this letter please contact us by
telephone or mail.

Sincerely yours,

HAROLD C. FAULKNER

Enclosure

ATTACHMENT

All plaintiffs born on or before October 1, 1949, who received an allotment of land on any part of the reservation or who have a direct ancestor who received an allotment on any part of the reservation will qualify for judgment as members of Class A.

All plaintiffs living on October 1, 1949 and resident on the reservation at that time, who received reservation benefits and services, and held an assignment of land, or can prove that though eligible to receive an allotment, they were never allotted; and their lineal descendants of these plaintiffs who were living on October 1, 1949, will qualify for judgment as members of Class B.

All plaintiffs living on June 2, 1953, who have 1/4 degree Reservation

Blood (described below), who have direct ancestors born on the reservation, and who have lived on the reservation for a period or periods totalling 15 years prior to June 2, 1953, will qualify for judgment as members of Class C. Reservation Blood is defined as blood of the following tribes: Yurok, Hoopa/Hupa, Grouse Creek, Hungtang/Hunsotton/Hoonsolton, Miskut/Miscotts/Miscolts, Redwood/Chilula, Saiaz/Nongatl/Siahs, Sermalton, South Fork, Tish-tang-atan, Karok, Tolowa, Sinkoyone/Sinkiene, Wailake/Wylacki, Wiyot/Humboldt, Wintun.

All plaintiffs who have 1/4 degree Indian blood born after October 1, 1949 and before August 9, 1963 to a parent who is now or who would have been, when alive, qualified as a member of Classes A, B, or C will qualify themselves as members of Class D.

Finally, all plaintiffs born after August 9, 1963 who are of 1/4 degree Indian blood derived exclusively from their qualified parent or parents who is or would have been, when alive, a member or members of Classes A, B, or C will themselves qualify as members of Class E.

Plaintiffs who do not meet the requirements of any of the above five classes may still qualify if the trial judge rules that it would be manifestly unjust to exclude them. While it has not been clearly determined what factors will allow plaintiff to qualify under this standard, such plaintiffs will have to show a close association with the Reservation. Some factors which may be considered include birth on the Reservation, lengthy residence on the Reservation, enrollment on a census of the Reservation and receipt of Reservation benefits and services.

AMERICAN BAR ASSOCIATION MODEL
CODE OF PROFESSIONAL RESPONSIBILITY

EC 5-15. If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that

he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

EC 5-16. In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of

any potential conflict and to obtain other counsel if he so desires. Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.

DR 5-106. A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of

the total amount of the settlement, and of the participation of each person in the settlement.

DR 7-101. Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in

the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

I-1

PLAINTIFFS SUBJECT TO OCTOBER 1981
MOTIONS FOR SUMMARY JUDGMENT
WHOSE MOTIONS WERE DENIED BY
TRIAL JUDGE'S CONCLUSION OF LAW NO. 7

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00032	ADAMSON, Cheryl Lynn
00033	ADAMSON, Darrell Lee
00035	AKERS, Evie Patricia M.
00038	ALAMEDA, Henry Clinton, Jr.
00039	ALAMEDA, Kari Dawn
00040	ALAMEDA, Lawrence Dean
00060	ALLEN, Deborah Ann
00062	ALLEN, Duane W., Jr.
00063	ALLEN, Elaine Yvonne
00064	ALLEN, John Melvin
00065	ALLEN, Karen Lynette
00066	ALLEN, Kathleen L.
00067	ALLEN, Laurie Ann
00072	ALLEN, Terrance Michael
00077	ALVARADO, Aaron Arthur
00082	ALVARADO, Maurice M.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00084	ALVARADO, Trace Lee
00092	AMES, Roy, Sr.
00093	AMMON, Aldena Ruth
00094	AMMON, Bonnie Elaine
00095	AMMON, Charles
00096	AMMON, Chauncey L., Jr.
00097	AMMON, Daniel Earl
00098	AMMON, Earl Robert
00099	AMMON, Erick Charles
00100	AMMON, Frank Leslie
00101	AMMON, Jack Morrow
00102	AMMON, John
00103	AMMON, Joseph Allen
00104	AMMON, Junius Allen
00105	AMMON, Kenneth Dale
00106	AMMON, Leslie
00108	AMMON, Michael Norman
00109	AMMON, Phillip
00110	AMMON, Ruth Edna Taylor
00111	AMMON, Thomas Eugene

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00112	AMMON, Wesley
00113	AMMON, Wesley Paul
00115	AMOS, Corey Donovan
00126	ANDERSON, Kim Ann
00127	ANDERSON, Myron W., Jr.
00141	AYERS, Terry Alan
00142	BABB, Dennis Ray
00144	BABB, Elizabeth Ann
00145	BABB, Robert Leroy
00146	BABCOCK, David Allen
00148	BABCOCK, James Larkine
00149	BABCOCK, Nanette D.
00157	BAILEY, Barri Iona
00158	BAILEY, Cindy Hope
00159	BAILEY, George C., Jr.
00160	BAILEY, George C., Sr.
00161	BAILEY, Jacqueline Rae
00162	BAILEY, John Wesley, Jr.
00163	BAILEY, Linda John
00164	BAILEY, Lola Ann

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00165	BAILEY, Roger Alfred
00166	BAILEY, Stanley Jackson
00167	BAILEY, Stephen Charles
00168	BAILEY, Violet Green
00174	BARNES, Dennis Wayne
00176	BARNETT, Lori Ann
00178	BARRY, Daniel Dudley
00179	BARRY, Marie Eva Kimsey
00184	BATES, Arthur Lee
00186	BATES, Delray Lee
00189	BATES, Richard J.
00202	BEALL, Paul Joseph
00203	BEAN, Charles Luther, Jr.
00208	BEAN, Steven Lee
00213	BECK, Henry Arnold, Jr.
00214	BECK, Valerie Sue
00216	BEEBE, Clifford Henry
00219	BEEBE, Elizabeth Carpenter
00220	BEEBE, Floyd Williams
00223	BEEBE, Ronnie Ray

<u>Decl. No.</u>	<u>Name</u>
00237	BERG, Steven Michael
00240	BIGHEAD, Charlene C.
00241	BIGHEAD, Charlie, Jr.
00242	BIGHEAD, Chester
00243	BIGHEAD, Karen Lee
00244	BIGHEAD, Lillie Marie
00245	BIGHEAD, Luther R.
00246	BIGHEAD, Mary Lou Johnny
00247	BIGHEAD, Nora Mae
00248	BIGHEAD, Raymond
00249	BIGHEAD, Samuel Duane
00250	BIGHEAD, Sandra Lou
00251	BILLY, Melvin
00256	BLACKBURN, David C.
00257	BLACKBURN, Patricia Ann Lewis
00259	BLAGDEN, Cheryl L.
00260	BLAGDEN, Evelyn Marie
00261	BLAGDEN, Linda Sue
00262	BLAGDEN, Lisa Annette
00265	BLAKE, Mark Ervin

<u>Decl. No.</u>	<u>Name</u>
00268	BLAKE, Shirlee
00273	BLOUNT, Marion Martin
00275	BOMMELYN, Eunice M.
00276	BOMMELYN, Loren James
00277	BOMMELYN, Sheryl Ione
00278	BOMMELYN, Vicki Lynn
00279	BOMMELYN, William H.
00291	BOX, Arlene Deett Swanson
00292	BOX, Cynthia Deett
00293	BOX, Lonnie Dale
00294	BOX, Monte Paul
00295	BOX, Ramona Arlene
00296	BOX, Robert Orvis
00298	BOYER, David Bruce, Jr.
00310	BROOKS, Clara Joan
00311	BROOKS, Darla Jean
00313	BROOKS, Jaclyn Elaine
00317	BROOKS, Myrtle Robinson
00318	BROOKS, Nancy Colleen
00319	BROOKS, Rebecca Sue

<u>Decl. No.</u>	<u>Name</u>
00324	BROWN, Aaron Arthur
00332	BROWN, Christine D.
00335	BROWN, Earl Leroy
00336	BROWN, Elsie Marie McClung Criteser
00339	BROWN, Laura Lynn
00345	BRUNDIN, Kara Lee
00346	BRUNDIN, Thomas Haynes II
00347	BRUNDIN, Thomas Haynes III
00348	BRUNDIN, Eric Floyd
00349	BRUNDIN, Luanna Ellen
00350	BRUNDIN, Marta Sue
00354	BUCKLEY, Freddie
00356	BUCKLEY, Lorie
00365	BUSSELL, Anita Lyn
00366	BUSSELL, Clemard Isaac Jr.
00368	BUSSELL, Gordon Lester
00369	BUSSELL, Neta M. Dartt
00370	BUSSELL, Oswald Noel
00371	BUSSELL, Timothy Leonard

<u>Decl. No.</u>	<u>Name</u>
00377	CAETANO, Deborah Marie
00378	CAETANO, Frank
00379	CAETANO, Rodney James
00380	CAETANO, Thomas James
00391	CANTWELL, Gloria Lee
00392	CANTWELL, Laura Sue
00393	CANTWELL, Leanna Lynn
00394	CANTWELL, Teresa Evelyn
00397	CARPENTER, Delmer Elroy
00402	CARRIER, Elsie G. Carpenter
00403	CARRIER, Hughey Jonathan, Jr.
00414	CASTRO, Brenda Lee
00415	CASTRO, James Richard
00417	CASTRO, Julie Ann
00428	CHARLES, Fred William
00432	CHARLES, Joann
00439	CHARLES, Margaret
00440	CHARLES, Mary Ellen
00448	CHASE, Billy Walter, Sr.
00449	CHASE, Catherine Lorine

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00453	CHASE, John Scott
00454	CHASE, Karyn Linnae
00455	CHASE, Linda Kathryn
00457	CHASE, Mark Henry
00467	CIRINO, Phillip Ivan
00468	CLAGGETT, Darryl Harvey
00469	CLAGGETT, Lawrence Eugene
00470	CLARK, Kim Marie Reves
00472	CLARK, Dane F.
00474	CLARKE, Rodney Arthur
00477	CLAYTON, Debbie Josephine
00487	COLEMAN, Laura Scott Brundin
	Hostler
00491	CONNER, Carol Lynn
00492	CONNER, John Clinton, Jr.
00495	CONNER, Karen Ann
00499	COOK, Kirk Van
00501	COOK, Mark Richard
00502	COOKE, Paige Kimball
00508	COOPER, Delores Corrine

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00526	COSTA, Constance Marie Webster
00531	COVEY, Meredith Mae Richards
00532	COX, Barbara Anne
00533	COX, Cindée Marie
00535	COX, John Michael
00537	COX, Michael Wayne
00538	COX, Terri Lynne
00540	CREWS, Evelyn Violet Jurin McClellan
00541	CRITESER, Bobbie Lee
00542	CRITESER, David Martin
00543	CRITESER, Dawn Alane
00544	CRITESER, Janelle Sue
00545	CRITESER, Kathleen M.
00547	CRITESER, Raymond E.
00548	CRITESER, Rayona Fay
00549	CRITESER, Teresa Ann
00550	CRITESER, Timothy Sam
00551	CRUTCHFIELD, Adam Bruce
00558	CRUTCHFIELD, Mark Alan

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00569	CURTICE, Karen Jo
00572	CURTICE, Timothy Everett
00574	DAGGETT, Leland Lloyd
00575	DAGGETT, Marcia Lorette
00576	DAGGETT, Maureen L.
00577	DAGGETT, Michelle L.
00578	DAGGETT, Monique Leon
00583	DARTT, Wilmer Allan
00584	DAVE, Fannie Ruben Abernathy
00585	DAVE, Harold
00586	DAVIDSON, Charlene M.
00587	DAVIDSON, Earl G., Jr.
00606	DECANTI, StaceyAnn
00607	DECANTI, Donna Marie
00609	DECANTI, Anthony M., Jr.
00614	DERHAM, Pauline Pike
00621	DEWEY, Denton Patrick
00622	DEWEY, Joann Moorehead
00623	DEWEY, Michelle Evon
00658	DOWNS, Peter Frederick

Decl.
No.Name

00662	DOWNS, Susan Marcia
00683	EDDY, Christopher James
00687	EDWARDS, Marian Kaye
00696	ELLER, Barbara Jane Charles
00715	EVANS, Kathryn Gale
00717	EVANS, Rickey R. Ward
00718	EVANS, Robert Donald
00721	FAUSTINO, Tina Marie
00722	FAUSTINO, Tracy Dean
00723	FERNANDES, Andrew P.
00732	FIESTER, Edward Robert
00749	FLORES, Katherine Gayle
00763	FORD, Gary Edward
00764	FORD, Howard G.
00808	FRITZ, Mae Evelyn Ned Newmill Rako
00811	FRYE, Clifford Leonard
00815	FRYE, Davita Rose Copeland Smither
00816	FRYE, Eugene David
00817	FRYE, Linda Faye
00819	FRYE, Randal Wayne

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00820	FRYE, Richard Samuel
00821	FRYE, Sandra Gail
00822	FULLER, Zena Pitt
00825	FULTON, Irene May
00837	GALYEAN, David Clayton
00838	GALYEAN, Gary Douglas
00839	GALYEAN, Gregory Allen
00895	GILKISON, Alan Duane
00896	GILKISON, Grant Morgan
00897	GILKISON, Sherlee E.
00899	GILLESPIE, Anthony Z.
00903	GILLESPIE, Darrel A., Jr.
00904	GILLESPIE, Elaine Rose
00905	GILLESPIE, Faron Dean
00907	GILLESPIE, Linda A.
00921	GORE, Kevin Wesley
00926	GRANT, Judith Pauline
00930	GREEN, Betty Jean Hostler
00931	GREEN, Brenda Gayle
00933	GREEN, Doyle Carl

<u>Decl. No.</u>	<u>Name</u>
00934	GREEN, Evelyn L. Henry
00935	GREEN, John Douglas
00936	GREEN, Joyce Marie
00938	GREEN, Lincoln Ernest
00940	GREEN, Maxwell Alvin
00941	GREEN, Melody Lee
00942	GREEN, Nadine Jo Ann Henry
00943	GREEN, Richard
00945	GREEN, Stanley Ernest
00946	GREEN, Verla
00947	GREEN, Zelma Bartow
00958	GRIFFIN, Seeley Lane
00969	GRIGSBY, Bret Tracy
00971	GRIGSBY, Frances Mae
00972	GRIGSBY, Glenn James
00973	GRIGSBY, James Earl
00974	GRIGSBY, Kenneth Owen
00975	GRIGSBY, Russell Dean
00977	GRIGSBY, Wayne A.
00978	GROOME, Lydia Ruth Pevey

<u>Decl.</u> <u>No.</u>	<u>Name</u>
00981	GRUBBS, Eugene Edward
00983	GRUBBS, Lloyd F.
00985	GRUBBS, Melvin Glen
00988	GRUBBS, Michael Lee
00990	GRUBBS, Salley Kathleen
00992	GUTIERREZ, Gloria E. Jones
00993	GUTIERREZ, Iverna D.
00994	GUTIERREZ, Johnny F.
00998	HABERMAN, Dorothy Dee
01000	HABERMAN, Gary Lance
01010	HAMES, Albert Bruce, Jr.
01011	HAMES, Albert Bruce, Sr.
01012	HAMES, Bruce Wayne
01013	HAMES, Charles F., Jr.
01014	HAMES, Charles Leroy
01015	HAMES, Ernest Eugene
01016	HAMES, Jimmy Joe
01017	HAMES, Karen Rachell
01018	HAMES, Leroy Arthur
01019	HAMES, Ronald Dean

<u>Decl. No.</u>	<u>Name</u>
01020	HAMES, Sharon Lynne
01031	HANCORNE, Warren James
01032	HAND, David Brent
01033	HAND, Ricky Lee
01034	HAND, Vicki Lynn
01041	HARDING, Beverly A. Mattingly
01042	HARDING, Dynice A.
01043	HARDING, Gary Raymond
01044	HARDMAN, Cynthia R.S.B. Heintz
01045	HARRIS, Dorothy L. Pevey
01046	HARRIS, Jeffery D.
01047	HARRIS, Kelly Martha
01048	HARRIS, Mary M. Pevey
01056	HARTMAN, Theresa J.
01057	HARTMAN, Laurie Ann
01061	HARTMAN, Wayne Eugene
01063	HAVEN, Jennifer Lee
01064	HAWVER, Cynthia Gail
01065	HAWVER, Deanna Gail
01066	HAWVER, Paul Marie

<u>Decl. No.</u>	<u>Name</u>
01085	HELMS, Gary Lane
01086	HELMS, Gayla Louise
01087	HELMS, Geoffrey L.
01088	HELMS, Gerald Lance
01089	HELMS, Gilbert Lee, Jr.
01090	HENDERSON, Clive E.
01091	HENDRICKSON, Karen A.
01093	HENDRICKSON, Ronald
01094	HENDRICKSON, Shirley M.
01104	HENRY, Grant Wesley
01105	HENRY, Kathleen Eunice
01110	HENRY, Yvonne Annette
01115	HICKOX, Clarice McCovey
01116	HICKOX, Kenneth Lloyd, Jr.
01126	HODGE, Henry Eugene
01139	HODGE, Robert Charlie McCovey, Jr.
00143	HOFFMAN, Maria Eileen
01148	HOLDREN, Shannon Tarrell
01152	HONEYCUTT, Betty Jo
01153	HONEYCUTT, Billie Jean

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01159	HONEYCUTT, James Wayne
01164	HONEYCUTT, Preston B.
01167	HOPKINS, Clyde Lee
01168	HOPKINS, Ethel Mae
01169	HOPKINS, Karen K. Kimsey
01170	HOPKINS, Kenneth S.
01171	HOPKINS, Mark Perry
01172	HOPKINS, Thomas Ernest
01174	HORN, Charles H.
01175	HOSTLER, Chris E.
00176	HOSTLER, Elmer Alvin
01177	HOSTLER, Frank Harold
01179	HOSTLER, Pamela Ray
01180	HOSTLER, Robin Marlene
01181	HOTELLING, Barbara M.
01183	HOTELLING, Judith L.
01187	HOWARD, Cheri Linette
01190	HOWARD, Earl Vernon, Sr.
01198	HOWARD, Richard Lynn
01203	HUFFORD, Eric John

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01212	HURD, Allan Lee
01213	HURN, Lena Leona Hulleman
01220	IIAMS, Jeffery Allan
01221	IIAMS, Marianne
01222	IIAMS, Tanya Leigh
01235	JACKSON, Henry R., Jr.
01249	JAMES, Oliver
01272	JOHANNSEN, Bruce I.
01273	JOHANNSEN, David
01274	JOHANNSEN, Dianne E.
01276	JOHANNSEN, Hans G.
01280	JOHANNSEN, Irene Kathleen
01281	JOHANNSEN, Jeraldine
01282	JOHANNSEN, Joan P.
01284	JOHANNSEN, John Marel
01285	JOHANNSEN, Judy Mae
01287	JOHANNSEN, Randolph Allen
01289	JOHNNY, Minnie Ruben
01290	JOHNNY, Clyde
01294	JOHNSON, David L., Jr.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01295	JOHNSON, Debra Dorene
01296	JOHNSON, Desiree Dawn
01303	JONES, Kenneth L.
01305	JOHNSON, Marilyn Oscar
01306	JOHNSON, Melissa Ann
01307	JOHNSON, Vickie Lynn
01310	JOHNSTON, Terri Ann
01338	JURIN, Charles Ray
01339	JURIN, Donna R. Dartt
01340	JURIN, Frank Allen
01341	JURIN, Gary Russell
01342	JURIN, John Dale
01343	JURIN, John Dale, Jr.
01344	JURIN, Lillian Violet Carpenter
01345	JURIN, Martin Leon
01346	JURIN, Milton Harvey
01347	JURIN, Phyllis Jeanne Dartt
01348	KAISI, Christine Marie
01349	KAISI, Irene Elena
01350	KAISI, James Charles

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01351	KAISI, Melanie E.
01352	KAISI, Susan Joyce
01353	KAISI, Thomas Michael
01362	KEEFER, Jessica Ann
01366	KEENE, Robert J., Jr.
01367	KENNE, Sharon Rosette
01376	KELSEY, Kimberley V.
01381	KIBBY, Daniel James
01382	KIBBY, David Clarence
01383	KIBBY, David Scott
01384	KIBBY, Dayleen Isabel
01385	KIBBY, Wanda June
01386	KIMSEY, Delmer Harvey
01387	KIMSEY, Kelly Kay
01388	KIMSEY, Leslie M.
01396	KING, Arnold W.
01397	KING, Dale R.
01398	KING, Doreen Faye
01399	KING, Nadine S.
01400	KING, Roland L.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01404	KINNEY, Allison Louise
01405	KINNEY, Anjanette E.
01407	KINNEY, Don Miller, Jr.
01416	KINSMAN, Albert Merle
01417	KINSMAN, Florence Bell
01418	KINSMAN, Gene Douglas
01420	KLEINHANS, Dale Edward
01421	KLEINHANS, Deborah Ann
01422	KLEINHANS, Dennis Gale
01424	KLEINHANS, Robert N.
01440	KUENSTER, Gail Dianne
01443	KUENSTER, Lynn F.
01448	LAMBERT, David Francis
01449	LAMBERT, Linda Marie
01451	LAMBERT, Noreen Ardith
01462	LAVENDER, Nena Maria
01465	LEEST, Anita Faye
01467	LEEST, Robert Donald
01468	LEEST, Stephen Laurence
01478	LEWIS, Charles E.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01484	LEWIS, Ernest, Jr.
01486	LEWIS, Ernest III
01494	LEWIS, Henrietta W. Masten
01499	LEWIS, Kimberly K.
01505	LEWIS, Dawna Jean
01507	LIEN, David Andrew
01508	LIEN, John Ashford
01511	LINDBLOM, Gregory M.
01513	LINDGREN, Axel R., Sr.
01528	LITTLEFIELD, James R.
01529	LITTLEFIELD, Richard
01531	LITTLEFIELD, Timothy
01532	LITTLEFIELD, Wayne Lee
01538	LOGAN, Ralene Rose
01548	LOPEZ, Barbara Maxine Richards
01533	LOVE, Leora M. Hames
01555	LAW, Carmen D.
01556	LAW, David Daniel
01557	LAW, Jackson J. Conrad
01558	LAW, Lavon Rose

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01559	LAW, Mary Jane
01560	LUCERNO, Angela Marie
01561	LUIS, Constance Kaye
01562	LUIS, Jodye Luise
01563	LUIS, Stephen C.
01564	LUIS, Tony Francis, Jr.
01565	LUSTER, Dennis George
01567	LYALL, Kim M. Roxanne
01577	LYTLE, Steven Michael
01578	MCALLISTER, Benny E.
01580	MCALLISTER, Denny E.
01590	MCCLELLAN, Duane K.
01591	MCCLELLAN, Edward K.
01593	MCCLELLAN, Janet D.
01594	MCCLELLAN, Paul G.
01595	MCCLOSKEY, Allen
01599	MCCLOSKEY, Terri
01600	MCCLOSKEY, Timothy Joe
01601	MCCLUNG, Herbert S.
01603	MCCONNELL, Carol Leigh

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01604	MCCONNELL, Denise R.
01608	MCCONNELL, Lisa Marie
01613	MCCONNELL, Stacey Lee
01614	MCCONNELL, William I.
01619	MCCOVEY, Brian Dean
01634	MCCOVEY, Holly Ann
01671	MCCOY, Bonny Sue
01672	MCCOY, Connie
01675	MCDONALD, Evan Lee
01679	MC DONALD, Laura Shaffer
01682	MCDONALD, Thomas
01692	MCGUIRE, George P.
01694	MCGUIRE, Jean Marie
01731	MCNAIR, Bertha Jean Rice
01747	MCNERTNEY, James R.
01748	MCNERTNEY, Michael N.
01761	MCVEY, Lorraine Kay
01762	MCVEY, Michael Edwin
01778	MAHACH, Harvey L.
01786	MALONEY, Ruth Ann

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01810	MARTIN, Debra Jean
01812	MARTIN, Doris Christine
01816	MARTIN, Eva Marie
01817	MARTIN, Frances Dee
01818	MARTIN, Jerry Dean
01820	MARTIN, Johnny Ray
01822	MARTIN, Kristi Lynn
01823	MARTIN, Lance Allen
01826	MARTIN, Lee Arnold
01827	MARTIN, Lester A.
01828	MARTIN, Lester C.
01830	MARTIN, Linda Jo
01832	MARTIN, Louis A., Sr.
01833	MARTIN, Louis A., Jr.
01838	MARTIN, Mickey Gene
01840	MARTIN, Rhonda Luanna
01841	MARTIN, Richard Stokes
01845	MARTIN, Tommy Joe
01852	MASSEI, Marcia Jo
01853	MASSEI, Michael A.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01854	MASSEI, Patricia Jo
01861	MASTEN, Charles A. III
01862	MASTEN, Cheryl Rose
01869	MASTEN, Gregoy A.
01874	MASTEN, Vesta Renee
01882	MATA, Robert Arthur
01891	MATTINGLY, Fred H.
01892	MATTINGLY, George F., Jr.
01893	MATTINGLY, Thieta D.
01894	MATTINGLY, Vicki Lyn
01895	MATTINGLY, Wilma R. Bussell
01896	MATTZ, Betty Maxine Jones
01898	MATTZ, Donald Ray
01899	MATTZ, Edna D. Criteser Brown
01900	MATTZ, Emery T., Sr.
01903	MATTZ, Glenna Renae
01904	MATTZ, Jack Edwin
01906	MATTZ, Kenneth Lee, Jr.
01907	MATTZ, Kenneth Lee, Sr.
01908	MATTZ, Kim Rochelle

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01910	MATTZ, Michael A.
01911	MATTZ, Michael Ray
01914	MAY, Michael Britt
01917	MEAD, Crystal Joy
01918	MEAD, Elaine M. Owens
01924	MELLO, Audrey M. Swanson
01925	MELLO, Barbara J.
01926	MELLO, Dorothy D.
01927	MELLO, Joseph J., Jr.
01928	MELLO, Judith Ann
01929	MELLO, Mary Arlene
01930	MENZEMER, Kathleen A.
01935	MENDEZ, Charles K.
01940	MERIDETH, Bruce E.
01943	MERTLE, Janice Fay
01954	MILLIKEN, Daniel N.
01956	MILLIKEN, William B.
01960	MINARD, Filmore C.
01963	MINARD, Phillip E.
01971	MITCHELL, Lavina M.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
01972	MITCHELL, Lenoire C.
01976	MITCHELL, Rodney T.
01983	MOLLIER, Donna Marie
01986	MOLLIER, Jennifer L.
01987	MOLLIER, Katherine L.
01988	MOLLIER, Kimberly A.
01990	MOLLIER, Michael C.
01991	MOLLIER, Monty Byron
01994	MOLLIER, Stephanie A.
01995	MOLLIER, Terri Renee
01996	MONHART, Maryellen
02019	MOORE, Dennis Wade
02020	MOORE, Ernest Dale
02022	MOORE, James Stephen
02025	MOORE, Karne Yvonne
02027	MOORE, Kathy Lynn
02029	MOORE, Linda Dianne
02030	MOORE, Michael Wayne
02033	MOORE, Tanya Jeanne
02107	NATT, Florinda D.

<u>Decl. No.</u>	<u>Name</u>
02109	NATT, Mary Shaffer
02127	NILES, Cindy Marie
02143	NOONAN, Christine Ruben
02151	NORRIS, Ella Vera Green
02157	NORRIS, James Leroy
02159	NORRIS, Lenai Marie
02175	NORRIS, Stanford E., Jr.
02190	NULPH, Cynthia J.
02192	NULPH, Randall Eric
02193	NULPH, Robert Alan
02194	NULPH, Ronald Wayne
02218	OFFICER, Betty Jean Pike
02231	OLSON, Dana Anthony
02235	OLSON, Karen Dawn
02239	O'NEILL, Cheryl Mae
02246	OLSON, Sonja Gayle
02245	O'NEILL, Monna F.
02246	O'NEILL, Owen B.
02247	O'Neill, Patrick G.
02265	OSCAR, Anita Ann

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02266	OSCAR, Benjamin D.
02268	OSCAR, Debra Lynn
02269	OSCAR, Delano F., Sr.
02271	OSCAR, Freelan N., Sr.
02272	OSCAR, Freelan N., Jr.
02273	OSCAR, Gertrude N.
02274	OSCAR, Imogene Rita
02277	OSCAR, Lewis Benjamin
02279	OSCAR, Alfred Melford Livingston
02280	OSCAR, Malford L.
02281	OSCAR, Robert Lewis
02282	OSCAR, Suanne
02283	OSCAR, Valdemar O.
02287	OWENS, Iola W.
02288	OWENS, Margaret Ann
02292	OWNSBEY, Keith James
02296	PARFREY, Christine Lou Ann Oscar
02310	PATTERSON, Stanley W.
02311	PAUL, Alice Inger
02317	PEARSON, Karen E.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02318	PEARSON, Ronald Matt
02326	PERKINS, Dana Gary
02332	PETE, Lenora M.
02333	PETE, Linda Elaine
02345	PETERS, Pamela Lynn
02347	PETERS, Raeann F. Roberson
02351	PETERS, Tamara C.
02361	PHILLIPS, David Roy
02364	PIKE, Rosalie Patterson
02365	IKE, Sheila
02369	PITT, John Joseph
02368	PITT, Gary Glenn
02371	PITT, Joseph Henry, Jr.
02372	PITT, Rhonda Lee
02373	ITT, William Peter
02379	PLIKERD, Chad Eugene
02380	PLIKERD, Cindy Ann E.
02381	PLIKERD, Gail Nelson
02382	LIKERD, Shirley Bernice Edwards
02383	PLIKERD, Shirley June

<u>Decl. No.</u>	<u>Name</u>
02386	POLE, Carlton Arnell
02388	OLE, Jeffery D.
02389	OWELL, Deborah M.
02393	PRICE, Lisa Joan
02395	PRICE, Shelly Jean
02396	PRIDEMORE, Stephen L.
02404	PROCTOR, Larry Dwayne
02406	PROCTOR, William B.
02407	PUZZ, Debra Lillian
02411	PUZZ, Cathy D. England
02414	PUZZ, Sherie Lynn
02421	QUINN -Eleanor-Rosalie (duplicate declaration number see # 1758 on Attachment A)
02434	QUINN, Martha Noble
02445	RAILS, Gary Paul
02446	RAILS, Gladys Marie Tinsley Leroy
02447	RAILS, Leroy Vern
02448	RAILS, Susan Lee
02454	RAMBO, Donna Dee

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02456	RAMBO, Joyetta Jane
02458	RAMIREZ, George, Jr.
02461	RAMIREZ, Michael
02480	REED, Barbara Renee
02485	REED, George Earl
02486	REED, Jeanine O'Della
02491	REED, Lois Marie Berg
02493	REED, Mary Ellen
02503	REIDEL, Hazel Marie Criteser
02504	RICE, David Evan
02505	RICE, Evelyn Marie
02506	RICE, Norma Jean
02509	RICHARDS, Allen J., Jr.
02510	RICHARDS, Brian K.
02511	RICHARDS, Cherry Ann
02513	RICHARDS, Darlene A. Hostler
02516	RICHARDS, Dewayne
02520	RICHARDS, Etta Mae
02521	RICHARDS, Eugene Clyde
02527	RICHARDS, Irene Marie

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02530	RICHARDS, Kim Maxine
02531	RICHARDS, Laurence A
02534	RICHARDS, Mark Kelly
02535	RICHARDS, Marvin L.
02536	RICHARDS, Mattie J.
02539	RICHARDS, Randall E.
02540	RICHARDS, Ronald D.
02542	RICHARDS, Viola E. Green
02543	RICHARDS, Walter, Jr.
02546	RICHARDS, William Harrison, Jr.
02562	ROBINSON, Alan Elliott
02564	ROBINSON, Denise E.
02565	ROBINSON, Edward Lee
02566	ROBINSON, Roy Elmer
02567	ROBINSON, Evonne Joy
02570	ROBINSON, Kenneth Vernon, Jr.
02571	ROBINSON, Richard H.
02572	ROBINSON, Richard R.
02573	ROBINSON, Robert Raymond
02574	ROBINSON, Robert Roosevelt

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02576	ROBINSON, Ronda Gay
02577	ROBINSON, Shelly M.
02578	ROBINSON, Tamara Rae Tonicore
02581	ROBINSON, Barbara Ann
02582	ROBINSON, Geoffrey S.
02583	ROBINSON, John Douglas
02584	ROBINSON, Margaret J.
02585	ROBINSON, Mark L.
02586	ROBINSON, Ronald S.
02587	ROBINSON, Sharon Kay
02588	ROBINSON, Stanley J.
02589	ROBINSON, Victoria M.
02590	ROGERS, Pauline M.
02597	ROOK, Carrie Lee
02598	ROOK, Carolyn L.
02601	RASSBACH, Coral Lynn
02602	RASSBACH, Michael Lee
02603	RASSBACH, Roberta
02612	ROUSE, Violet Leadema Hames
02613	ROWE, Dane Mike

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02614	ROWE, Karen Denise
02615	ROWE, Yvonne Faye
02621	RUUD, Casbara
02625	RYERSON, Stephanie J. Cooper
02635	SALAZAR, Lillian C. Ames Oscar
02647	SANDERSON, Eldon A.
02659	SANDERSON, Steven F.
02662	SANDHOLM, Karan Ann
02663	SANDHOLM, Melvin Arvid
02672	SCHADE, Dorothy Ortha
02673	SCHADE, Ronald Lee
02674	SCHADE, Sharon Rose
02676	SCHWENK, Erick Darrell A.
02684	SCOTT, Chester E., Sr.
02685	SCOTT, Chester E., Jr.
02686	SCOTT, Debra Cherie
02688	SCOTT, Ernest
02690	SCOTT, Fred William, Sr.
02691	SCOTT, Frederick W., Jr.
02696	SCOTT, Jeanette M.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02703	SCOTT, Lucinda Lee
02706	SCOTT, Sharmaine
02707	SCOTT, Sherry Lee
02711	SCOTT, Yvonne
02713	SERGEYS, Marrollee Kay
02714	SERGEYS, Michael Ejon
02715	SEVERNS, David Eric
02727	SHERMAN, Patricia Bussell
02736	SIMMS, Amanda Sue
02751	SLIGH, Sharon J. Eller
02771	SMITH, Lesley L.
02783	SMITH, Robert Wayne
02785	SMITH, Shawn Larue
02786	SMITH, Stacey Maelin
02788	SMITH, Terry Lee
02789	SMITH, Una Marie
02791	SMITH, Virginia McDonald Williamson
02792	SMITH, Wayne Leroy
02813	SNAPP, Darlene Violet

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02814	SNAPP, Elizabeth
02816	SNAPP, Joseph Edward
02817	SNAPP, Roland Scott
02818	SNIDER, Durlinda Rose
02819	SNIDER, Jeanette M.
02820	SNIDER, Jean Marie Swanson
02821	SNIDER, Jerry Lee
02822	SNIDER, Jimmy Dee
02823	SNIDER, John D. IV
02828	SORRELL, Willard J.
02835	SPEAR, Patrick Henry
02850	STEBBINS, Larry S.
02857	STEVENS, Kim Denise
02864	STEVENS, Nina Marie
02865	STEVENS, Rickey E.
02871	STEWART, Connie Gwenn
02873	STEWART, Harold Eugene, Sr.
02874	STEWART, Harold Eugene, Jr.
02879	STILLWELL, Barbara Jean
02880	STILLWELL, Betty J. Robinson

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02881	STILLWELL, Cecil A.
02882	STILLWELL, Dorothy Robinson
02883	STILLWELL, Michael Everett
02884	STILLWELL, Raymond Dudley
02885	STILLWELL, Sandra L.
02886	STOGSDILL, Roy Charles
02887	STOKES, Christie M.
02893	STRACENER, Susan Renee
02898	STYLES, Fletcher B. Joseph
02907	SUPER, Kendra Zoe
02918	SWANSON, Dale Ernest
02919	SWANSON, David T.
02920	SWANSON, Davie Ray
02921	SWANSON, Deborah Lynn
02922	SWANSON, Dennis Ray
02923	SWANSON, Donna D.
02924	SWANSON, Donald P.
02925	SWANSON, Donald W.
02926	SWANSON, Eddie Ray, Sr.
02927	SWANSON, Eddie R., Jr.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02928	SWANSON, Elwood T.
02930	SWANSON, Gary Dean
02931	SWANSON, Katherine E.
02932	SWANSON, Leslie F.
02933	SWANSON, Leslie P.
02934	SWANSON, Michael P.
02935	SWANSON, Oscar Peter
02936	SWANSON, Terry Wayne
02937	SWANSON, Zulene M.
02953	TARBELL, Gail Marie
02954	TARBELL, Sandra Lynn
02955	TARBELL, Sharon Elaine
02956	TAYLOR, Brenda Denise
02957	TAYLOR, Brian Alan
02963	TAYLOR, Janice E. Patterson Kelsey
02964	TAYLOR, Julie Ann
02965	TAYLOR, Laree M.
02970	TAYLOR, Melodee Rae
02972	TAYLOR, Paul Allen

<u>Decl.</u> <u>No.</u>	<u>Name</u>
02973	TAYLOR, Richard O.
02975	TAYLOR, Sharee Lorraine
02979	TEMPLE, Glenn W.
02981	TEMPLE, Roney Dale
02983	TENNISON, Loretta E.
02992	THOMAS, Roy J.
03005	THORNTON, Colleen
03006	THORNTON, Goldie
03007	THORNTON, Jackie
03008	THORNTON, Maxine
03010	TINSLEY, Nancy Ann
03011	TOLMAN, Alice Arlene Berg
03012	TOLMAN, Jody Ann
03013	TOMASINI, Donald A.
03017	TONDANI, Cynthia J.
03018	TONDANI, Diana M.
03022	TRACY, Larry Sidney
03030	TRIMBLE, Donald E., Sr.
03033	TRIMBLE, Franklin W., Sr.
03035	TRIMBLE, Frederic J., Sr.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03038	TRIMBLE, Kimberly May
03055	TROMBETTI, Anthony
03056	TROMBETTI, Darci Ann
03057	TROMBETTI, David Owen
03058	TROMBETTI, John, Jr.
03059	TROMBETTI, Michael
03061	TROMBETTI, Pamela S.
03062	TROMBETTI, Scott
03063	TUMULAK, Carol Lynn Patterson
03065	TUTTLE, Heidi Maria Alameda
03069	VALENZUELA, Michael Paul
03077	VEGA, Deborah Ann
03084	VIENNA, Donna Marie
03085	VIENNA, Kimberly M.
03104	WARD, Delight Dawn
03107	WARREN, Donald Mark
03108	WARREN, Violet Rails
03110	WATKINS, Janice L.
03111	WATKINS, John J. Wayne
03112	WATKINS, Linda M.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03114	WATKINS, Lionel H. L. III
03116	WATKINS, Patricia A.
03117	WATKINS, Ronald S.
03126	WEBB, Montese Louise
03127	WEBER, Charles John
03139	WELCH, Audrey Parks
03144	WESTON, Stephen Cleveland
03145	WHIPPLE, Aaron Gaylen
03147	WHIPPLE, Andrew Richard
03149	WHIPPLE, Cynthia L.
03151	WHIPPLE, Clarence Beenie, Jr.
03161	WHIPPLE, William Frank
03162	WHIPPLE, Zelma Green
03169	WHITE, Howard E.
03172	WHITE, Luther, Jr.
03176	WHITEHURST, Deanna Russell
03177	WHITEHURST, Walter James, Jr.
03179	WHITTET, Lottie Juanita
03187	WILCHER, Eddie Lee
03188	WICHER, Evelyn McClung

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03194	WILDER, George L.
03200	WILDER, Lenny Allen
03206	WILDER, Martin Jay
03208	WILDER, Rebecca Anne
03211	WILDER, Stanley, Jr.
03214	WILKINSON, Beverly A.
03215	WILKINSON, Marie E.
03216	WILKINSON, Vera Mae Kimsey
03220	WILLIAMS, Desma Marie
03228	WILLIAMS, Lila Lee
03234	WILLIAMS, Tami Lynn
03238	WILLIAMS, James D.
03239	WILLIAMSON, Cara Lee
03240	WILLIS, Carroll Mark, Jr.
03241	WILLIS, Earl Mark
03242	WILLIS, Gary Newman
03243	WILLIS, Marie Ann
03244	WILLIS, Recella L. Oscar
03245	WILLSON, Billie L.
03246	WILLSON, Irene Jewel

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03249	WILLSON, Teresa M.
03257	WILSON, Carolyn F. Oscar
03258	WILSON, Christina M.
03266	WILSON, Juanita Luann
03267	WILSON, Kenneth Gene
03272	WILSON Robert Linwood, Jr.
03293	WISEMAN, Drew Michael
03306	WRIGHT, Vera Vivian
03307	WYMER, Keith Glenn
03308	WYMER, Laura Kay
03325	ALCORN, Betty L.
03326	ALCORN, Todd L.
03327	ALLEY, Michelle L.
03333	BARTLETT, Barbara Ann
03334	BARTLETT, Claire Renwick
03335	BARTLETT, Gail Lynn
03336	BARTLETT, Julee Claire
03338	BAUM, Charles
03345	BERGER, Joanella Jo
03348	BERGER, Michael William

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03350	BEST, John Allen
03351	BEST, Robert Arnold
03352	BILLIE, Kenneth George
03353	BISKEBORN, Janice K.
03354	BISKEBORN, Mark Lane
03355	BISKEBORN, Norma
03356	BISKEBORN, Rodney
03359	BLAKE, Vicki Lee Pallin
03371	BROWN, Connie Rae Freeman
03383	CANNON, Carri G.
03384	CANNON, Catheryn
03385	CANNON, Cindy L.
03386	CANNON, Gayle A.
03387	CANNON, Leslie M.
03388	CANNON, Rick W.
03389	CANNON, Robert G.
03391	CARLSON, Karrie Lynn
03400	CHASE, Arthur W.
03401	CHASE, Edward M.
03402	CHASE, Francis Melvin

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03403	CHASE, Richard
03404	CHASE, Robert Eugene
03406	CLARK, Shirley Ann Halstead
03410	COLLINS, Angela K.
03411	COLLINS, Cheryl A.
03412	COLLINS, Deloris A.
03413	COLLINS, Derick J.
03414	COOKE, Allison Anthony
03415	COOKE, Bernard Wayne
03416	COOKE, Joseph Bedford
03417	COOKE, Thomas Lester
03419	COOLEY, Dale Michael
03421	COOLEY, David Wayne
03422	COOLEY, Debra Yvonne
03424	COOLEY, Donald Lee, Jr.
03428	COOLEY, Sharla Renae
03430	CRITESER, Caroline M.
03431	CRITESER, Raymond L.
03432	CRITESER, Sam W.
03433	CRITESER, Sami J.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03434	CRNICH, Becky Lee
03438	CRONE, Marian L.
03440	DAGGETT, Dolly
03445	DONAHUE, Juanita Rose
03446	DONAHUE, Lelanette
03447	DONAHUE, Troy Lee
03456	DOWNS, Veronica
03458	DOYLE, Bobby
03463	EINMAN, Elizabeth Ann
03465	ERICKSON, Angel
03466	ERICKSON, Axel V. III
03470	ERICKSON, Lorenzo
03471	ERICKSON, Sharon
03473	EVANS, Gary Lane
03483	FLETCHER, Jacqueline Ehrlich
03484	FLETCHER, Talitha Ann
03485	FLETCHER, Tami Raquel
03486	FLETCHER, Tianna Linn
03487	FLETCHER, Tiffany Grace
03488	FLETCHER, Troy Steven

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03489	FOSTER, Alfred Andrew
03490	FOSTER, Dorothy Amanda
03491	FOSTER, Hilda Jackson
03492	FOWLER, Merle Lee
03495	FREEMAN, Arbee, Jr.
03406	FREEMAN, Arbee, Sr.
03497	FREEMAN, Cheryl
03498	FREEMAN, David
03499	FREEMAN, Kristi Ann
03500	FREEMAN, Ted L., Jr.
03501	FREEMAN, Ted L., Sr.
03507	FRYE, Kathryn A. Van Pelt
03508	FRYE, Kelly Jean
03513	GACHES, Tammi Lynn
03516	GRAHAM, Glenda Marie
03517	GRAHAM, Pamela Kay
03518	GRANT, Darcy Ranae
03519	GRANT, Hugh W. III
03520	GRANT, Joseph V.
03521	GRANT, Julia L.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03522	GRANT, Roberta M.
03523	GRAY, Vivien Elva
03526	GREEN, George S.
03531	GREEN, Virgil L., Jr.
03537	GROOTENDORST, Marjorie Freeman
03538	HAILSTONE, Albert
03553	HUGHES, Mary Ann
03556	JACKSON, Pearl Elva Green
03559	JAKE, Tamra Marie
03560	JAKE, Teddy Steven
03568	JOHNSON, Laureen F. Siipola
03570	JOHNSON, Marguerite Minta Miller
03577	KEISNER, Lornie Leland
03580	KELLING, Francine
03583	KIDD, James Saxey
03584	KING, Deborah Eileen
03585	KING, Kenneth R., Jr.
03587	KING, Odessa M.
03588	KING, Randy Verne
03590	KINNEY, Joyce L.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03591	KINNEY, Randy L.
03592	KULA, Joshua W.
03593	LAAM, John Harvey
03595	LAMBERSON, Andrew James
03600	LAWRENCE, Faye
03602	LEIS, Henry S.
03603	LETSON, Daniel Jay
03610	LOPEZ, Danny Joseph
03614	LOTT, Christopher
03615	LOTT, Ethel Laurie Green
03617	MABRY, Sheryle Green
03622	MARSHALL, Eunice Bartow
03623	MARSHALL, Thelma Green
03626	MAYER, Bonnie Marie Miller
03628	MELVIN, Charles Matthew
03629	METCALFE, Belle Joanna
03630	METCALFE, Bonnie Rae
03631	METCALFE, Steven Joe
03632	MILLER, Allan F.
03633	MILLER, Arthur W.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03634	MILLER, Keith Lane
03635	MILLER, Ralph Duane
03642	MOORE, David Eric
03645	MOORE, Gary Alvin
03647	MOORE, Gregory Alan
03648	MOORE, Joyce P.
03649	MOORE, Sandra Lee Freeman
03652	MOULTON, Charles A.
03653	MOULTON, Chris A.
03654	MOULTON, Clyde R., Jr.
03655	MOULTON, Eugene R.
03656	MOULTON, Marguerite V. Beach
03657	MOULTON, Michael R.
03658	MOULTON, Robert L.
03659	MULKINS, Nola May Letson
03660	MULLEN, Richard Duane
03662	MURPHY, Lana D. McClung Baum
03663	MYERS, Dewey
03664	MYERS, Harold L.
03665	MYERS, Louis S.

Decl.No.Name

03667	MYERS, Melissa S.
03671	MCCLUNG, Edison Charles
03672	MCCLUNG, Edison Otto
03673	MCCLUNG, Evette
03674	MCCLUNG, Evonne L.
03675	MCCLUNG, Howard R.
03676	MCCLUNG, Jennifer
03677	MCCLUNG, Kelly A.
03678	MCCLUNG, Larry
03679	MCCLUNG, Linda K.
03680	MCCLUNG, Tamara
03681	MCCLUNG, Ted Leon
03682	MCCOVEY, Barry Wayne
03683	MCCOVEY, Diana L. McKinnon
03684	MCCOVEY, Terry
03686	MCLAUGHLIN, Jennifer L.
03692	NELSON, Elizabeth Ann
03693	NELSON, Elizabeth Inga
03697	NELSON, Richard Nicholas III
03698	NELSON, Ricky

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03699	NELSON, Richard Robert
03700	NELSON, Rollie Samuel
03701	NELSON, Ross Allan
03703	NEVAREZ, Deana Nanette
03704	NEVAREZ, Shay-Kili-Jeffe
03705	NIX, Lorrie Sue
03709	O'CONNOR, Eugenia Tina
03712	ORCUTT, Harvey Brent
03714	ORCUTT, Wayne L.
03719	PARKER, Keith A.
03725	PITTS, Mary Jean
03726	PITTS, Nancy Jean
03727	PLUMMER, Daniel A. Woodhurst, Jr.
03732	QUILLEN, Marlene Mae Miller
03726	QUINN, Jessie Ann
03727	QUINN, Larry
03740	RENWICK, Bernice Alta
03741	RENWICK, Robert Irving
03746	RINDELS, Gaylon Dale
03748	ROBERTS, Koren Ann

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03750	ROBERTS, Veronica L.
03752	SAMPELS, Brandon
03755	SCOTT, Jeanne R.
03756	SCOTT, Joe Basilio
03757	SCOTT, Shane
03759	SCOTT, William John III
03760	SHAMP, Delbert Deloss III
03761	SHAMP, Dorothy Mae Cooley
03762	SHAW, Glenna Rae
03769	SNYDER, Carl
03770	SNYDER, Vicki
03771	SOUSA, Joey Francisco
03775	SPOTT, Tina Marie
03777	STEVENS, Clark Gerald
03778	STEVENS, Wilma Myrtle Chase
03779	STRONG, Marian Molly
03781	STUECKLE, Patricia Ann Keisner
03783	SURBER, Clarence R.
03784	SURBER, Frank O.
03785	SURBER, Gordon T.

<u>Decl.</u> <u>No.</u>	<u>Name</u>
03786	TAYLOR, Lawrence D.
03787	TAYLOR, Michael S.
03790	THOMPSON, Darrin
03702	THOMPSON, Kevin
03797	THRASHER, Bradley James
03801	TOWNSEND, Sherry L.
03802	TOWNSEND, Stephanie
03809	TURNER, Michael Irvin
03811	VANCE, John McGreagor, Jr.
03812	VAN PELT, Carol Ann
03817	VAN PELT, Kelly Ann
03821	WAGGLE, Lavertta June
03822	WAGGLE, Monica Cleone
03827	WARD, Amber D.
03830	WARRINGTON, Rochelle Lynn
03831	WARRINGTON, Shirley E.
03833	WHITEHURST, Dennis Lee, Jr.
03846	ZEBEL, Allan
TOTAL:	1,127